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Deputy Attorney General Joseph Dworak

March 13, 2023

Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VOTER REFERENCE FOUNDATION, et al.,

Plaintiff,

VS.

NO. 22-CV-0222 JB/KK

RAUL TORREZ, in his official capacity
as New Mexico Attorney General, et al.,

Defendants.

DEPOSITION OF JOSEPH DWORAK
March 13, 2023
10:25 a.m.
Office of the Attorney General
Santa Fe, New Mexico

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: MR. MATT MUELLER
Attorney for Plaintiff

REPORTED BY: Jennifer Bean, FAPR-RDR, RMR CRR,
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<p style="text-align: center;">Page 14</p> <p>1 that enforcement looks like very much depends upon 2 the facts of the situation.</p> <p>3 Q. Is there a specific division or group of 4 people in the Attorney General's Office that would 5 kind of be assigned to policing unlawful use of voter 6 data?</p> <p>7 A. The individuals in our office that would be 8 involved with issues related to voter data or any 9 voter issues would depend upon how we obtain the 10 information related to it.</p> <p>11 So, I mean, yeah, I guess there is not a 12 clear answer. It's not limited just to one group of 13 people in the office.</p> <p>14 Q. Does the Attorney General's Office have a 15 role related to voter data, other than investigating 16 potential unlawful use of voter data?</p> <p>17 MS. LECOCQ: Objection.</p> <p>18 A. The Office of the Attorney General's role, 19 again, is very much dependent upon what the referral 20 is. It could come from members of the public. It 21 could come from a role with providing assistance to 22 the Secretary of State, monitoring elections. It 23 could come from a referral from the Secretary of 24 State. It could come from a referral from somewhere 25 else.</p>	<p style="text-align: center;">Page 16</p> <p>1 advice to the Secretary about whether or not it 2 should provide voter data to a requester?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 A. Is that speculative? I mean, I guess I'm 5 not sure if you're asking has that happened in the 6 past, or could that, or would that happen?</p> <p>7 Q. Well, let's say: Has that happened in the 8 past, has the Attorney General's Office given advice 9 to the Secretary about whether it should provide 10 voter data to a requester?</p> <p>11 MS. LECOCQ: Objection.</p> <p>12 A. I mean, part of -- certainly, some of that 13 would be privileged, if we were --</p> <p>14 Q. And I'm not asking for the content.</p> <p>15 A. Yeah, I mean those, questions certainly 16 have come up in the past.</p> <p>17 Q. Would you agree that the Attorney General's 18 Office has a duty to investigate the actual or 19 potential misuse or unlawful use of voter data?</p> <p>20 A. Can you ask that question again?</p> <p>21 Q. So would you agree that the Attorney 22 General's Office has a duty to investigate the actual 23 or potential misuse of voter data?</p> <p>24 A. That question would depend on the 25 circumstances. I mean, if it's more appropriate for</p>
<p style="text-align: center;">Page 15</p> <p>1 Q. So let's say you, the Attorney General's 2 Office, receives a complaint from a citizen about 3 something related to their voter data. Would that be 4 handled in-house, or would that be referred to, say, 5 the Secretary of State's Office?</p> <p>6 A. It depends on what the allegations are. I 7 mean, many of those are often referred to the 8 Secretary of State, which obviously is the agency 9 charged with enforcing and reviewing election laws on 10 a daily basis. And, you know, our office works in 11 conjunction with them, if there is something that, 12 you know, after their review, if there is something 13 that we need to look at from a civil or criminal 14 standpoint.</p> <p>15 Q. I'm not asking for any advice you might be 16 giving here. But does the Attorney General's Office 17 advise the Secretary of State's Office if there is a 18 question regarding whether voter data is being used 19 unlawfully?</p> <p>20 MS. LECOCQ: Objection.</p> <p>21 A. I mean, generally, we certainly have the 22 ability to -- and have -- I can't say that every time 23 there is a question we would necessarily have to be 24 involved, or have been involved.</p> <p>25 Q. Does the Attorney General's Office provide</p>	<p style="text-align: center;">Page 17</p> <p>1 that -- at least initial investigation or review to 2 be done by, say, the Secretary of State, who is 3 charged statutorily with enforcing and reviewing 4 those laws, then you might start there.</p> <p>5 So it doesn't mean that anytime that there 6 is an alleged allegation it would necessarily have to 7 be us exclusively, or us first. We certainly -- our 8 office certainly has the ability and duty, when 9 appropriate, to investigate those kind of issues.</p> <p>10 Q. And what if the Attorney General's Office 11 receives a referral from the Secretary of State's 12 Office saying: Hey, we think that voter data is 13 being used unlawfully, does the Attorney General's 14 Office then have a duty to investigate that?</p> <p>15 A. We certainly have the authority to. I 16 don't know if we have an affirmative duty to.</p> <p>17 Q. Has the Attorney General's Office ever 18 initiated an investigation into the use of voter data 19 without receiving a referral from, say, the Secretary 20 of State's Office or a citizen complaint?</p> <p>21 MS. LECOCQ: Objection.</p> <p>22 A. That's outside of the scope of these 23 questions. I don't know the history of, you know, 24 100 year history of our office. I couldn't speak to 25 that.</p>

<p style="text-align: center;">Page 18</p> <p>1 Q. Are you aware of the Attorney General 2 initiating an investigation into the use of voter 3 data on its own volition since you've been at the 4 Attorney General's Office?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 A. From my own standpoint? I can't speak to 7 the office, because again, that's outside of the 8 scope of what I prepared for with this deposition. 9 But not that I'm aware of. But I wouldn't 10 necessarily be aware of it either because of my role 11 inside the office.</p> <p>12 Q. Okay. Well, I'm going to move right in. I 13 want to talk generally about the Attorney General's 14 positions on how New Mexico law regulates voter data. 15 And I want to start from a high level, just -- we're 16 going to talk about some of the statutes that have 17 been raised in this case. And then kind of move into 18 how that applies to our present case. But, just 19 generally, what restrictions does New Mexico law 20 place on how voter data may be used?</p> <p>21 MS. LECOCQ: Objection.</p> <p>22 A. Yeah, I don't -- I wasn't prepared to talk 23 about all of the different types of laws and the 24 Election Code that could potentially be implicated 25 related to voting. So could you be a little bit more</p>	<p style="text-align: center;">Page 20</p> <p>1 under -- let's limit it to 1-4-5.5? 2 MS. LECOCQ: Objection.</p> <p>3 A. Well, first, I'll say that there are other 4 laws that are implicated here. This can't be read in 5 just a vacuum. But clearly, requesters of this 6 information can only use voter data for these listed 7 purposes, which include governmental purposes and 8 election campaign purposes. And it also explicitly 9 states that the data shall not be made available or 10 used for unlawful purposes. And so I know that there 11 is another law that clarifies use and limitations of 12 voter data.</p> <p>13 Q. I noticed when you were going over the 14 permissible uses there, you omitted election from the 15 uses that are permissible. Is that intentional?</p> <p>16 MS. LECOCQ: Objection.</p> <p>17 A. Well, I was just clarifying the two that 18 are defined here in the statute.</p> <p>19 Q. But you agree that Subsection C of this 20 statute says can be used for -- shall be used for 21 governmental or election and election campaign 22 purposes only?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. That's what the statute says.</p> <p>25 Q. Okay. You mentioned that there are other</p>
<p style="text-align: center;">Page 19</p> <p>1 specific?</p> <p>2 Q. Well, let's start with what restrictions 3 does New Mexico law place on the sharing or 4 dissemination of voter data?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 A. Yeah, I mean, I have the same answer. I 7 can't speak generally to that. But as some of the 8 examples that relate specifically to this case tie 9 into the limitations on the use of data, that they 10 have to be for authorized purposes. And so that's 11 laid out pretty clearly in the statute what those 12 purposes can and can't be used for, and the process 13 of the Secretary of State's Office has for requesting 14 such data.</p> <p>15 Q. What are the purposes that voter data can 16 be used for? And let's limit it to under Section 17 1-4-5.5, which is the one implicated in this case.</p> <p>18 A. Do you have a copy of the statute?</p> <p>19 Q. I'm sure we do. We can go ahead and mark 20 this as Exhibit 2.</p> <p>21 (Exhibit 2 marked.)</p> <p>22 Q. If you can let me know when you've had time 23 to review it.</p> <p>24 A. Yeah, I finished.</p> <p>25 Q. So for what purposes can voter data be used</p>	<p style="text-align: center;">Page 21</p> <p>1 laws that are implicated here, I believe was the word 2 you used. What other laws are implicated?</p> <p>3 A. Well, there is a number. I mean, there is 4 statute, the entire Election Code, of course, and 5 then there is regulations that are adopted by the 6 Secretary of State under the state Election Code.</p> <p>7 I know that there is -- I can't recall the 8 section, but in Article 5, I believe, there is a 9 section that describes unauthorized use and what that 10 includes, which is prohibited under state law.</p> <p>11 Q. What's the relationship, then, between this 12 1-4-5.5 and this other section that you're referring 13 to?</p> <p>14 MS. LECOCQ: I'm going to have a standing 15 objection for legal conclusion, so I quit 16 interrupting you.</p> <p>17 MR. MUELLER: Certainly.</p> <p>18 A. Yeah, well, I'll say one -- a legal 19 conclusion that I could draw is not necessarily the 20 conclusion of our office. And also these are laws 21 that govern the Secretary of State's Office. And so, 22 you know, it's difficult for me to answer, you know, 23 how these should be interpreted when this isn't a 24 statute that governs activity of the office of the 25 Attorney General.</p>

<p style="text-align: right;">Page 38</p> <p>1 they're both -- you know, that provides for 2 violations of under the Voter Records System Act, 3 1-4-5.6 does. And 1-5-23, as you stipulated, is part 4 of Voter Records System Act. So I would assume, but 5 again, that conclusion would be dependent upon a 6 fact-specific analysis to determine what statutes are 7 implicated and what potential penalties could be 8 imposed, and violations.</p> <p>9 Q. Is it a violation of New Mexico law to post 10 voter data on the internet?</p> <p>11 MS. LECOCQ: Objection.</p> <p>12 A. That is a question also that would be very 13 fact specific. It would depend upon what publishing 14 means. Is it publishing in a manner that's 15 controlled to ensure that use is limited for lawful 16 purposes, or whether it was published in a manner 17 that would, you know, allow it to be used for 18 unauthorized purposes. Because clearly, the state 19 law allows for only limited purposes for this data. 20 And, you know, that would be dependent upon the 21 control of that data. So publishing is not a clear 22 term, right? I mean, publishing could mean many 23 different things.</p> <p>24 Q. Okay. If I define publishing as the 25 willful selling, loaning, providing access to, or</p>	<p style="text-align: right;">Page 40</p> <p>1 controlling for use, to ensure that that use wasn't 2 used for unlawful purposes as defined by state law.</p> <p>3 Q. So when I asked this question it was simply 4 about publication on the internet. And so I 5 understand some positions about sharing the voter 6 data within an entity versus outside an entity. But 7 what does control look like if voter data is 8 published on the internet?</p> <p>9 Let me rephrase that. You mentioned 10 publication to the general public. Is it unlawful to 11 publish voter data online to something less than the 12 general public?</p> <p>13 MS. LECOCQ: Objection.</p> <p>14 A. Again, it's a very fact-specific situation. 15 I mean, if a campaign published it to a website that 16 only their staff had access to, that's very different 17 than publishing it on a website that the public has 18 access to. You know, publishing in the newspaper, 19 you know, I mean, publishing of, you know, mailers, I 20 mean just sharing that information generally, passing 21 around flyers. You know, publishing is not a word 22 that's defined. And I think -- well, I don't know if 23 it's intentional or not, but certainly any word 24 that's not defined, and even some that are, require a 25 fact-specific analysis to determine, you know,</p>
<p style="text-align: right;">Page 39</p> <p>1 otherwise surrendering voter file, is publishing 2 voter data on the internet a violation of New Mexico 3 law?</p> <p>4 MS. LECOCQ: Objection.</p> <p>5 A. Again, it would depend upon the facts of 6 that circumstance. Whether it was in a controlled 7 environment or whether it was published publicly, and 8 then all the, you know, different conditions with 9 that, I think would change the analysis with that. 10 So you can't simply just say it is or it isn't, 11 because there is too many variables to those 12 conditions.</p> <p>13 Q. What do you mean when you say "controlled 14 environment"?</p> <p>15 A. Well, under the -- under the Election Code 16 and Voter System Act, often political campaigns will 17 purchase this data. One person will purchase it, and 18 maybe somebody else in the campaign actually is the 19 one to put the mailers out, to send, you know, 20 campaign material. So they clearly shared it, right, 21 with someone else. But that environment is 22 controlled. So, you know, that's a good example 23 because that happens regularly. And then, you know, 24 it would be very dependent upon what the control of 25 that sharing is, inside or outside of groups,</p>	<p style="text-align: right;">Page 41</p> <p>1 whether it's implicated or not in these types of 2 analyses.</p> <p>3 Q. Is it unlawful for a person that filled out 4 the affidavit for the Secretary of State and received 5 voter data in response to then transfer that voter 6 data to a third party?</p> <p>7 MS. LECOCQ: Objection.</p> <p>8 A. I can't come up with a conclusion from our 9 office with a hypothetical. But again, I think it 10 would be very much dependent upon the specific facts, 11 which may take, you know, significant time to review 12 and determine whether or not the data that has 13 limited uses is being shared in a way that would 14 violate those restrictions that are placed on it by 15 statute.</p> <p>16 Q. Okay. Let's talk about this case, then. 17 Do you understand that an entity called Local Labs 18 requested data from the Secretary of State and 19 received that data?</p> <p>20 A. I'm generally aware of that.</p> <p>21 Q. And are you aware that Local Labs then gave 22 that data to Voter Reference Foundation, the 23 plaintiff in this case?</p> <p>24 MS. LECOCQ: Objection.</p> <p>25 A. I'm generally aware of that.</p>

<p style="text-align: center;">Page 50</p> <p>1 plausibly alleged that VRF was violating New Mexico 2 law?</p> <p>3 A. Our office hasn't made a determination -- 4 there is different laws here, right, and criminal 5 implication and actions of the Secretary of State's 6 Office. So, I mean, our position was to defend the 7 Secretary of State. There wasn't a separate 8 determination by our office.</p> <p>9 Q. What do you mean when you say your 10 "position was to defend the Secretary of State"?</p> <p>11 A. Well, I mean, that's the basis of this 12 litigation is the Secretary of State's Office, an 13 agency of the state, was sued, and we were defending 14 the Secretary of State's position and the actions 15 that they had taken.</p> <p>16 Q. Okay. But let's look at this. This 17 referral is dated December 20, 2021; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know when your office received this 20 referral?</p> <p>21 A. I don't see a time stamp. I don't know 22 what day, if it came -- well, it says email, so I 23 would assume it was emailed that day. But I don't -- 24 I can't confirm that.</p> <p>25 Q. Did your office receive this referral prior</p>	<p style="text-align: center;">Page 52</p> <p>1 law?</p> <p>2 A. That's the position that we have supported 3 through this litigation. And I think, you know, what 4 penalties or what additional laws could be violated 5 is like an independent matter from a criminal 6 standpoint, it's different from upholding any, you 7 know, administrative decision by the Secretary of 8 State, which I think is important to note.</p> <p>9 Q. Setting the referral aside, and what it 10 says the positions that the SOS took in the referral, 11 is the Attorney General's position, as we sit here 12 today, that Voter Reference Foundation has violated 13 New Mexico law?</p> <p>14 MS. LECOCQ: Objection.</p> <p>15 A. Yeah, again -- and I mean, I know we're 16 going to get to this -- but there are parallel issues 17 in questions. And this case is, you know, primarily 18 focused on the administrative decision of the 19 Secretary of State and our position which supports 20 it, which is yes.</p> <p>21 You know, could there be additional 22 determinations that our office could make? Yes. But 23 the office hasn't taken independent action or 24 taken -- you know, made separate decisions apart from 25 the specific issue related to this case, which is the</p>
<p style="text-align: center;">Page 51</p> <p>1 to VRF filing its lawsuit?</p> <p>2 A. These dates I recall, but I'd have to 3 refresh my memory on what the dates were. I know 4 some of these dates were close together.</p> <p>5 Q. If I tell you that VRF filed its lawsuit in 6 late March of 2022, does that refresh your 7 recollection?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So did your office receive this 10 referral before VRF filed its lawsuit?</p> <p>11 A. Yes.</p> <p>12 Q. So you were saying that -- I asked a 13 question about, at the time it received the referral, 14 did the Attorney General agree that the facts 15 outlined in the referral plausibly alleged that VRF 16 was violating the law?</p> <p>17 A. I mean, some of that is subject to attorney 18 work product and attorney-client privilege with the 19 Secretary of State's Office. I mean, I think the 20 work done by our office clearly shows the position 21 that we took, which supported the determination by 22 the Secretary of State that New Mexico laws were 23 being violated.</p> <p>24 Q. Is that the Attorney General's position, as 25 we sit here today, that VRF has violated New Mexico</p>	<p style="text-align: center;">Page 53</p> <p>1 determination by the Secretary of State.</p> <p>2 Q. You used the term "administrative decision" a few times there. Can you tell me what you mean by that?</p> <p>5 A. Well, the decision by the Secretary of State is not a judicial decision. It's not something that required a court determination to make. And so they chose to withhold this voter data from -- as an administrative action.</p> <p>10 Q. So when you say "administrative decision," you're referring to them not giving data to VRF?</p> <p>12 A. Correct.</p> <p>13 Q. You're not referring to them making this referral?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. I just --</p> <p>17 A. No, that's a good distinction.</p> <p>18 Q. I'm trying to think how to ask this. In terms of this civil litigation, is the Attorney</p> <p>19 General taking the same position as the SOS as to the</p> <p>20 legality of Voter Reference's actions?</p> <p>22 MS. LECOCQ: Objection.</p> <p>23 A. Well, I think that's pretty clear in the 24 pleadings that we filed and representing the 25 Secretary of State in the pleadings, so yes.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. And I think we can acknowledge a 2 difference, that there is one role for the Attorney 3 General's Office that is representing Secretary of 4 State in the litigation. There is another role, 5 which is the Attorney General is the chief law 6 enforcement officer, and is, itself, a defendant in 7 the litigation. Do you agree with that?</p> <p>8 A. Yes. And yeah, there are many roles that 9 the Attorney General's Office plays within the state.</p> <p>10 Q. And so I suppose I'm saying that just 11 because the Attorney General's Office is representing 12 the Secretary of State in this litigation, it doesn't 13 necessarily have to mean that the Attorney General is 14 taking all of the same legal positions as the 15 Secretary of State; correct?</p> <p>16 A. I'd have to see if there was anything in 17 the pleadings that have made that position. But 18 that's not impossible, certainly.</p> <p>19 Q. Are you aware of any positions that the 20 Attorney General's Office, as a party to this 21 lawsuit, has taken that are different than positions 22 taken by the Secretary of State's Office?</p> <p>23 A. Public positions, actions, I'm not aware of 24 any, no.</p> <p>25 Q. I want to get into the referral more, but</p>	<p style="text-align: right;">Page 56</p> <p>1 what does it mean for a case to be -- let's say -- 2 let me rephrase this. 3 If I refer to a case as open or active, can 4 we agree that that means the same thing? I think you 5 just used the word "open." They've used the term 6 inactive?</p> <p>7 A. Sure. I think much of this could very well 8 be subjective, right, but I think those two terms are 9 very synonymous.</p> <p>10 Q. So what does it mean for an investigation 11 to be active or open?</p> <p>12 A. That it's under investigation.</p> <p>13 Q. What does it mean for a case to be closed?</p> <p>14 A. That there had been some dispositive 15 action. Whether there had been a prosecution, 16 whether there was, you know, findings taken at face 17 value would not amount to any type of crime, so, 18 therefore, the dispositive action was that, you know, 19 no law was implicated. It could mean that the 20 investigation was put on hold, you know, or something 21 else. It wasn't, you know, determined if there was a 22 violation or not.</p> <p>23 Q. Okay. What does inactive mean? Or let me 24 be more specific. What is your understanding of what 25 it meant for a case to become inactive at the time</p>
<p style="text-align: right;">Page 55</p> <p>1 before we do that I want to ask some questions 2 generally before we get into the stuff that your 3 counsel and I have already negotiated some protection 4 for. And I think this is in your discovery response. 5 So your counsel informed us last week that the 6 investigation into VRF became inactive, I believe, on 7 April 12, 2022; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. What are the different -- I'm going to call 10 "inactive" a status, okay? What are the different 11 statuses of investigation by your office?</p> <p>12 A. That's a great question. I can speak 13 generally to my understanding. I have not -- some of 14 that very much is dependent upon the administration, 15 which has changed, and the individuals. I think 16 those categories are not set in stone. Because what 17 they might mean might be somewhat subjective.</p> <p>18 But our office -- criminal matters in our 19 office, the most common would be open or closed. And 20 I think the inactive status is -- and you could use 21 different terms, and imagine different terms have 22 been used in the past, where it's not as definitive, 23 because, you know, a formal position might not be 24 taken. And that could be for a variety of reasons.</p> <p>25 Q. This is going to seem very rudimentary, but</p>	<p style="text-align: right;">Page 57</p> <p>1 this case became inactive, which was April 12, 2022?</p> <p>2 A. I was not aware of the -- at that time, in 3 2022, I wasn't even in the office. When did I -- 4 yeah, I wasn't even in our office at that time. So I 5 mean, certainly at that time I didn't have any idea. 6 But I know that speaking to individuals within our 7 office, that term means that, just like I said 8 before, that it wasn't under active investigation; 9 that it was not -- you know, there was nothing 10 happening to the case. No final determination was 11 made. And that there was no, you know, ongoing 12 involvement from our office.</p> <p>13 Q. I want to clarify one thing. You said 14 closed meant that there is some kind of dispositive 15 action, which I believe you said can include 16 prosecution, findings of facts that amount to a 17 crime, or you said that it may just be that it's on 18 hold?</p> <p>19 A. No, I said that was if it was inactive --</p> <p>20 Q. Okay.</p> <p>21 A. -- not closed.</p> <p>22 Q. So if it's on hold, it would likely be 23 labeled as inactive or some similar term?</p> <p>24 A. Yeah.</p> <p>25 Q. Okay.</p>

<p style="text-align: center;">Page 66</p> <p>1 time?</p> <p>2 A. Well, it depends on -- I guess there is two</p> <p>3 different -- this is a criminal -- if you're</p> <p>4 referencing a criminal determination as to whether it</p> <p>5 was a criminal law being violated, there certainly</p> <p>6 was not a determination made at the time this letter</p> <p>7 was received.</p> <p>8 Q. Okay. If we move on a little further in</p> <p>9 that paragraph, it says, "We have attached our</p> <p>10 office's communication with Mr. Lippert regarding his</p> <p>11 voter data request. We believe that this data was</p> <p>12 illegally provided by Mr. Lippert or Local Labs to</p> <p>13 VoteRef.com and is being used against New Mexico</p> <p>14 state law." Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. So at least at this time, the Secretary of</p> <p>17 State was conveying its position to the Attorney</p> <p>18 General that the transfer of data from Local Labs to</p> <p>19 VoteRef was illegal; correct?</p> <p>20 A. That's what they're writing in this letter.</p> <p>21 Q. It then says, "Swift action is needed as</p> <p>22 voter data can quickly be manipulated and used to</p> <p>23 spread election misinformation."</p> <p>24 Did I read that incorrectly?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">Page 68</p> <p>1 ahead.</p> <p>2 A. Not that term. But I think that term is</p> <p>3 also not defined. Protecting information is part of</p> <p>4 election information, misinformation.</p> <p>5 So again, I think read in a vacuum, no,</p> <p>6 there is no reference to election misinformation or</p> <p>7 spreading election misinformation as a cause of</p> <p>8 action or elements to it. But I think that's</p> <p>9 speaking broadly, and does capture many of the</p> <p>10 purposes of the Election Code.</p> <p>11 Q. Does VRF's publication of voter data on its</p> <p>12 website constitute election misinformation?</p> <p>13 MS. LECOCQ: Objection.</p> <p>14 A. I don't believe our office has taken a</p> <p>15 formal position on that, but I believe that the</p> <p>16 Secretary of State's Office has. And we would</p> <p>17 support that position, as much as they've made that a</p> <p>18 defendant.</p> <p>19 Q. Okay. If we look at the next section, it</p> <p>20 lays out some facts -- it appears to be facts upon</p> <p>21 which the basis of this referral are grounded. And</p> <p>22 it talks about how Mike Lippert was provided voter</p> <p>23 data by the Secretary of State's Office on April 15,</p> <p>24 2021. Is that correct?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">Page 67</p> <p>1 Q. Is spreading election misinformation a</p> <p>2 crime under New Mexico law?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 A. That is not a defined term that has</p> <p>5 elements that would constitute a crime. But I think</p> <p>6 this isn't written in any type of legal document</p> <p>7 that's laying out charges and elements of a crime. I</p> <p>8 think it's just speaking.</p> <p>9 Q. I understand that, and I appreciate the</p> <p>10 distinction. But I'm just asking, you know, for your</p> <p>11 position, as the representative of the New Mexico</p> <p>12 Attorney General's Office, if it is a crime under New</p> <p>13 Mexico law to spread election misinformation?</p> <p>14 MS. LECOCQ: Objection.</p> <p>15 A. Yeah, I mean, I can't draw a legal</p> <p>16 conclusion. And also, I mean, there aren't elements</p> <p>17 to that. But I think that is part of protecting</p> <p>18 voter information, so -- and they're alluding -- I'm</p> <p>19 assuming that they're alluding to public policy,</p> <p>20 which is certainly, you know, underlined in all of</p> <p>21 the Election Code and the purpose for these statutes.</p> <p>22 Q. Okay. Are you aware of any New Mexico</p> <p>23 state statute which makes it unlawful to spread</p> <p>24 election misinformation?</p> <p>25 MS. LECOCQ: Objection -- never mind, go</p>	<p style="text-align: center;">Page 69</p> <p>1 Q. It then says, "Mr. Lippert was provided the</p> <p>2 entire statewide voter file after he paid \$5,378.12,</p> <p>3 and signed a vote information authorization form</p> <p>4 swearing they, quote, 'will not use or make available</p> <p>5 to others to use the requested material for purposes</p> <p>6 others than governmental election research and</p> <p>7 campaign purposes, under penalty of law.' Did I read</p> <p>8 that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Did Local Labs commit false swearing under</p> <p>11 that term quoted there, when it transferred the data</p> <p>12 from itself to VRF?</p> <p>13 MS. LECOCQ: Objection.</p> <p>14 A. Yeah, I think you're asking for a legal</p> <p>15 conclusion, which I can't make. I'm not sure if this</p> <p>16 was addressed in positions taken by our office or the</p> <p>17 Secretary of State in pleadings.</p> <p>18 Q. If the Secretary of State's Office took the</p> <p>19 position that that was an unlawful transfer, which it</p> <p>20 appears that they did from the part we just read</p> <p>21 above, does the Attorney General's Office have any</p> <p>22 reason to disagree with that position?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. Again, it would be difficult for me to</p> <p>25 analyze that and put it in context with anything that</p>

<p style="text-align: center;">Page 70</p> <p>1 we filed with the litigation, because, you know, 2 there could have been nuances to any position or 3 argument we've made. And I don't want to 4 misrepresent anything. But I don't see why we 5 wouldn't agree and support the Secretary of State's 6 position with that.</p> <p>7 Q. Okay. And I think, again, you know, I'm 8 asking for positions now based off of the facts and 9 the law, not necessarily, you know, just reciting the 10 positions that have been taken.</p> <p>11 So the facts in here as alleged -- in fact, 12 as alleged in the verified complaint in our federal 13 lawsuit -- admit that Local Labs transferred the data 14 to VRF.</p> <p>15 Okay. Knowing that, did Local Labs commit 16 false swearing by transferring that data from VRF 17 based off the quoted term here?</p> <p>18 MS. LECOCQ: Objection.</p> <p>19 A. Yeah, I can't draw that conclusion. But I 20 would say, generally, that would make sense to me. I 21 mean, that's logical.</p> <p>22 Q. Okay. That quoted section says, "Will not 23 use or make available to others to use, the requested 24 material for purposes other than governmental 25 election research and campaign purposes under penalty</p>	<p style="text-align: center;">Page 72</p> <p>1 at one singular point did the violation occur. 2 I don't know if that answers -- I'm happy 3 to try to better answer your question.</p> <p>4 Q. I understand what you're saying. But I 5 believe one of the positions taken in this litigation 6 is that, you know, Local Labs committed false 7 swearing, because they agreed to this term, and then 8 they gave data to VRF.</p> <p>9 Knowing that, I'm asking if Local Labs gave 10 the data to VRF for purposes that were governmental, 11 election research, or campaign purposes, would that 12 still be a violation?</p> <p>13 A. It could be if they lost control, and 14 therefore, you know, in an agency relationship, you 15 know, that argument could be made. And, again, 16 that's dependent upon all of the facts in this fact 17 pattern, which, you know, there were more obviously 18 beyond that, at which point the issue was raised.</p> <p>19 At that point alone, yeah, arguably maybe 20 not. But that's not where the facts ended.</p> <p>21 Q. So does that become a false swearing 22 because VRF published the data on its website?</p> <p>23 A. I think arguably that's part of it, at 24 least part of it.</p> <p>25 Q. What if Local Labs didn't know how VRF was</p>
<p style="text-align: center;">Page 71</p> <p>1 of law." I read that correctly again, did I not?</p> <p>2 A. Yes.</p> <p>3 Q. Do you agree with me that, if Local Labs 4 makes the data available to someone for a 5 governmental election research or campaign purpose, 6 it has not violated the agreement there in that 7 quoted section?</p> <p>8 MS. LECOCQ: I'm going to just do a 9 standing objection. I think this is outside the 10 scope of our topics. I'll just leave it at that.</p> <p>11 A. So, at which step this sharing of 12 information violated New Mexico law, one has to be 13 taken in context. And that context is what happened, 14 right? It may not be clear exactly at what point the 15 misuse of data occurred.</p> <p>16 But certainly, the end result, which was 17 published in a way that allowed no control over the 18 use of it, violated the restricted use of the data, 19 right, the prohibited uses that are allowed for by 20 statute.</p> <p>21 So there certainly is a good argument to be 22 made that at that point sharing could have limited 23 that control. But you could make the argument in the 24 alternative as well. And I understand that. But, I 25 mean, you know, this issue wasn't resolved from just</p>	<p style="text-align: center;">Page 73</p> <p>1 going to use the data?</p> <p>2 MS. LECOCQ: Objection.</p> <p>3 A. Again, that's a hypothetical that -- I 4 mean, I'm not going to answer hypothetical questions 5 that our office certainly hasn't taken a position on, 6 and the Secretary of State certainly hasn't taken a 7 position on, at least in terms of conclusions of law.</p> <p>8 Q. If VRF has taken the position that it posts 9 this information online so that the public can police 10 errors in voter records, is that a governmental 11 purpose under New Mexico law?</p> <p>12 MS. LECOCQ: Objection.</p> <p>13 A. Arguably, no.</p> <p>14 Q. Okay. I get arguably. But is it the 15 Attorney General's position that the publication of 16 voter data online, so that citizens could police the 17 voter records, was not a governmental purpose?</p> <p>18 MS. LECOCQ: Objection.</p> <p>19 A. Yeah, I think that position has been made 20 pretty clear in the pleadings that we have taken that 21 position.</p> <p>22 Q. Is it the Attorney General's position that 23 that same posting was not an election purpose?</p> <p>24 MS. LECOCQ: Objection.</p> <p>25 A. Well -- and again, our office's position</p>

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1 has only been made clear through these pleadings. I
 2 mean, there is not any other action or position that
 3 we've taken.

4 I think the position was the Secretary of
 5 State's Office that we're supporting and defending.
 6 So, you know, indirectly, yes.

7 Q. So the Attorney General's Office is taking
 8 the same position as the Secretary of State's office
 9 with regard to whether or not the posting was
 10 election related?

11 MS. LECOCQ: Objection.

12 A. Yeah, I mean our position has been
 13 consistent with the Secretary of State's.

14 Q. Is that your position as the attorneys
 15 defending the Secretary of State, or is that the
 16 Attorney General's position as a party to this case?

17 A. I think that position has been made clear
 18 that it's both.

19 Q. Same question: Is it the Attorney
 20 General's position, as a party in this case, that
 21 this -- the publishing of voter data was not for a
 22 research purpose?

23 MS. LECOCQ: Objection.

24 A. And you mean the publishing for the public;
 25 is that correct, for anyone?

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1 Q. Yes, I'm speaking about the ultimate
 2 publication of the data online to the public.

3 A. Yes. Yes, that's our position. That's my
 4 understanding that's the position of the Secretary of
 5 State's Office and our office as well.

6 Q. And is it the position of the Attorney
 7 General's Office, as a party to this litigation, that
 8 that public posting on the website was not for a
 9 campaign purpose?

10 A. Yes.

11 Q. When the Attorney General's Office received
 12 this referral, what facts did it need to figure out
 13 to determine if a violation occurred?

14 MS. LECOCQ: Objection.

15 A. Yeah. I mean, that's -- that analysis, I
 16 think, would be dependent on many things, including
 17 the position the individuals that did the analysis --
 18 so I can't speak to exactly what we would require,
 19 you know, these five questions be answered. But I
 20 mean, I think we've discussed this generally to
 21 determine under, you know, the review and actions
 22 taken by the Secretary of State, whether that
 23 position was supported by law, and you know, whether
 24 the publication and use of this data violated any of
 25 the Election Code or related statutes.

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1 Q. Upon receiving this, to determine if a
 2 violation occurred, would the Attorney General's
 3 Office investigate whether, in fact, this voter data
 4 was online?

5 MS. LECOCQ: Objection.

6 A. Are we -- so we're speaking to the criminal
 7 referral; is that correct?

8 Q. Yes.

9 A. I think any type of referral -- this one
 10 included -- would require a thorough review of the
 11 facts and the law. So I mean, that's certainly one
 12 of the facts that would have to be considered.

13 Q. And would the Attorney General's Office
 14 investigate the purpose for which the data was being
 15 posted online?

16 MS. LECOCQ: Objection.

17 A. Again, I mean, any review of alleged
 18 violations of law, whether criminal or civil, would
 19 necessarily require that, because that's one of the,
 20 you know, elements of or conditions of the data use
 21 under the statute.

22 Q. And would the Attorney General investigate
 23 how VRF obtained the data?

24 MS. LECOCQ: Objection.

25 A. I mean, again, all of this is very fact

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1 specific with, you know, where the -- where any
 2 investigation is at, in terms of timing; what other
 3 information is needed from agencies that refer; what
 4 type of allegations are being raised, what laws are
 5 being implicated. And so I can't speak to the, you
 6 know, exactly what happened or should have happened
 7 with this investigation with this specific case,
 8 right?

9 Q. I suppose the position taken in the
 10 litigation is that the publication of the voter data
 11 on the website to the general public violated New
 12 Mexico law. What more would the Attorney General's
 13 Office need to determine other than that the data was
 14 posted online to the general public?

15 MS. LECOCQ: Objection.

16 A. I'm -- in terms of a criminal
 17 investigation?

18 Q. Yes.

19 A. I mean, a criminal investigation can branch
 20 out and look at many different elements of law. So I
 21 mean, I can't speak to whether or not, you know, this
 22 might cause review of other statutes, right, other
 23 criminal laws being implicated. I mean, it's very
 24 fact specific. I mean, specific to this -- I guess,
 25 yeah, I'm not really sure -- I guess I'm not really

20 (Pages 74 to 77)

<p style="text-align: right;">Page 82</p> <p>1 the issue. I'm not asking about the -- you know, 2 policy decisions, or likelihood of success of an 3 actual prosecution. But certainly the decision about 4 whether or not the law was violated, or a position on 5 that issue is resolved before all those other things 6 are considered.</p> <p>7 So I'm asking -- knowing that we admitted 8 to what seems like the relevant facts for determining 9 if we violated the law under this theory, are there 10 other facts -- facts only, not other 11 considerations -- that the Attorney General's Office 12 needed to investigate to take a position on this 13 issue?</p> <p>14 MS. LECOCQ: Objection. Answer the 15 question, Joe.</p> <p>16 But before we get there, I think if you 17 wanted to know specifically why the Attorney 18 General's Office has not sought out other facts, we 19 can answer that. But that goes to the stuff that's 20 confidential.</p> <p>21 MR. MUELLER: Let's finish this question 22 and, then I'll go into that, because I think that 23 might be causing --</p> <p>24 MS. LECOCQ: Yeah.</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 84</p> <p>1 investigation of VRF and some of the questions that 2 we know are going to be under our agreement. I don't 3 think all of these questions are subject -- at least 4 not to the AEO counsel restrictions -- but I've 5 marked in my outline where I think that's going to 6 come up. So I will disclaim that before I ask those. 7 MS. LECOCQ: All right.</p> <p>8 Q. Let's start with: Did the Attorney General 9 conduct an investigation into VRF's activities prior 10 to April 12, 2022?</p> <p>11 A. The office opened an investigation.</p> <p>12 Q. Okay. Did it take steps to actually 13 investigate the facts and theories as raised in the 14 Secretary of State's referral?</p> <p>15 A. It, at least, began reviewing, you know, 16 the laws that were implicated, the evidence that was 17 received from the referral from the Secretary of 18 State's Office.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. So if you could answer that question, I 2 appreciate it. If it needs to wait for me to ask you 3 the stuff that's going to be protected, I can 4 appreciate that.</p> <p>5 A. Yeah. And I think what's important to note 6 here is that a decision from our office, or a 7 position from our office, if we're talking about a 8 formal position, is different than internal, you 9 know, does an attorney believe that a law was 10 violated.</p> <p>11 When our office takes positions on criminal 12 matters, it's a very big deal. And so those other -- 13 what I'm also calling facts, because they are facts 14 and other things that affect any type of criminal 15 investigation by our office -- have to be considered. 16 We cannot make decisions in a vacuum in criminal 17 cases.</p> <p>18 I don't think any law enforcement agency, 19 prosecutorial law enforcement agency, can do that. 20 It's just not -- I mean, maybe it's a rare example, 21 but, you know, you can't do that. This office cannot 22 take positions on pieces of a criminal investigation, 23 you know, without considering all of these other 24 things that we've discussed.</p> <p>25 Q. Okay. I'm going to go into the actual</p>	<p style="text-align: right;">Page 85</p> <p>[REDACTED]</p>

<p style="text-align: center;">Page 98</p> <p>1 Q. And are you aware, generally, of what the 2 purpose of these communications were? 3 A. I am. 4 Q. And what was that purpose? 5 A. To -- the purpose -- similar -- well, 6 except this was on our own, we initiated this 7 communication -- but it was similar to the 8 communication initiated by California, which is 9 normal by our office to consult points of contact in 10 other attorneys general offices, to see if similar 11 issues are being addressed by other offices, if they 12 have any perspective on the issue, if it's a regional 13 or potentially national issue. And so I think that 14 was the -- that's my understanding of the purpose. 15 Q. Was this part of the criminal investigation 16 of Voter Reference Foundation? 17 A. No. 18 Q. Does the Attorney General have any evidence 19 that VRF has manipulated voter data? 20 MS. LECOCQ: Objection. 21 A. Yeah -- well, one, I wouldn't be able to 22 speak to the -- any type of investigative work 23 product that persons that we may or may not be 24 looking at. And I'm not aware of manipulation -- but 25 I am not aware of manipulation arguments in any of</p>	<p style="text-align: center;">Page 100</p> <p>1 Q. Is the Attorney General's Office aware of 2 anyone using VRF's website for unlawful purposes? 3 MS. LECOCQ: Objection, same objection. 4 A. Again, yeah, I wouldn't know, and I 5 couldn't speak to criminal investigation of that. 6 But I think, you know, using it -- I mean, the fact 7 that it's out there and in an unrestricted setting, 8 so anyone could use it, is the unauthorized use, 9 because there is no control over how people use it. 10 That, itself, is the issue. 11 Q. So is a person committing unlawful use by 12 accessing the data that's on the website, or that was 13 on the website? 14 A. That's a great question. But I don't think 15 that's a conclusion that our office has come to yet. 16 Because I don't think individuals access this data 17 that's out there is part of any of the analysis or 18 positions our office has taken. 19 Q. Is the Attorney General aware of anyone 20 using the data that was posted on VRF's website to 21 stalk any individual? 22 MS. LECOCQ: Objection. 23 A. I wouldn't be able to speak to any type of 24 criminal investigation, which, you know, would 25 obviously be more serious for a question of that</p>
<p style="text-align: center;">Page 99</p> <p>1 the civil litigation. 2 Q. Is the Attorney General's Office aware of 3 VRF misrepresenting any voter data that was posted on 4 its website? 5 A. Misrepresenting any voter data? In the 6 civil litigation? 7 Q. I'm asking if the Attorney General's Office 8 has any knowledge that VRF has misrepresented any 9 data that was posted on its website? 10 MS. LECOCQ: Objection. 11 A. Yeah, I wouldn't be able to speak to any 12 potential criminal investigation that may have been a 13 part of that question. But from the civil context, 14 I'm not aware of that being raised. 15 Q. And I suppose, given your answer here, I'm 16 just going to ask your counsel if you're invoking a 17 privilege as to not disclose the evidence that the 18 Attorney General might have from its criminal 19 investigation regarding the manipulation or 20 misrepresentation of voter data by VRF? 21 MS. LECOCQ: That's right. 22 MR. MUELLER: Can we get on the record what 23 the privilege assertion is? 24 MS. LECOCQ: Investigative work product. 25 Attorney client.</p>	<p style="text-align: center;">Page 101</p> <p>1 context. But I don't believe that there was any 2 evidence that we introduced as part of a civil 3 litigation or have said publicly of individual cases 4 that actually have occurred. 5 Q. Is the Attorney General aware of anyone 6 using data that was posted on VRF's website to harass 7 any other individual? 8 MS. LECOCQ: Objection. 9 A. Again, to the criminal investigation 10 context, I can't speak to that. But I think, also in 11 the civil context, the term "harass" is pretty 12 subjective, I mean, what that means. But I'm not 13 aware of any individual cases, individual person, 14 that we've raised this example, either in the 15 litigation or any other type of public position on 16 it. 17 Q. Has the Attorney General investigated 18 whether anyone used the data that was posted on VRF's 19 website for any of those purposes? 20 MS. LECOCQ: Objection. 21 A. So speaking just to this litigation -- 22 Q. I wanted the criminal investigation. 23 MS. LECOCQ: Can you rephrase your 24 question? 25 Q. Has the Attorney General conducted an</p>

<p style="text-align: right;">Page 102</p> <p>1 investigation as to whether any person has used the 2 data posted on VRF's website for unlawful purposes, 3 stalking, or harassment?</p> <p>4 MS. LECOCQ: Objection; privilege on that, 5 investigative work product, or attorney-client.</p> <p>6 A. So, yeah, I can't speak to any potential 7 criminal investigation regarding that. But the -- 8 can you ask the question one more time. I want to 9 make sure I'm answering it the best I can.</p> <p>10 Q. I said: Has the Attorney General's Office 11 conducted any investigation as to whether a person 12 has used the data that was posted on VRF's website 13 for -- let's say, for any unlawful purpose?</p> <p>14 A. Well, the position that we've taken is that 15 posting this information and allowing it to be used 16 for any purposes is the legal issue, right? That's 17 the unlawful purposes. So part of that, I think, was 18 reviewed -- part of how long the website has been up 19 there, that it has been accessed, it's publicly 20 available, a list of individuals.</p> <p>21 I'm not sure if there has been a list of 22 how many people have accessed that. But the -- are 23 you asking if those individuals accessing the 24 information or the data, do we have a list of them? 25 Is that what you're asking?</p>	<p style="text-align: right;">Page 104</p> <p>1 to use it, you know, to use it without any 2 restrictions or conditions is the issue. 3 It's not just a trust exercise. You can't 4 just throw out data, and just hope that somebody that 5 gets access to it will use it only the way the law 6 prescribes.</p> <p>7 Q. That speaks as to VRF, though, correct?</p> <p>8 VRF is committing the allegedly unlawful act by 9 publication.</p> <p>10 But I'm asking about someone that logs on 11 to VoteRef.com and accesses, say, someone else's 12 data. Have they violated the law by accessing that 13 data?</p> <p>14 MS. LECOCQ: Objection.</p> <p>15 A. Yeah, that will draw a legal conclusion 16 that I don't think we've made in this case. I think 17 it's a valid question. But we haven't taken a 18 position, so I couldn't speak on behalf of the 19 office. I think it very much would depend upon 20 intent and, you know, the purpose which they're using 21 it for.</p> <p>22 Q. I'll focus further. I'm not asking if your 23 office has taken a position on that. I'm asking you, 24 as you sit here, is the position of the Attorney 25 General's Office that a third party, by accessing</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Perhaps this is a little clearer. Setting 2 aside VRF, are you aware of any third party -- let's 3 exclude VRF and Local Labs from that definition -- 4 using the data was posted on VoteRef.com for any 5 unlawful purpose?</p> <p>6 MS. LECOCQ: Objection.</p> <p>7 A. Yeah, I'm not sure if I can answer that, 8 because -- and I'd have to look at the facts and the 9 arguments raised by our office and the Secretary of 10 State. But the unlawful action is any -- you know, 11 the fact that it's there and individuals are using 12 it. Again, I don't -- I don't know if there is a 13 list of all of those accessing it. But the fact that 14 it's there, accessing it would be -- because there is 15 no control over who can -- you know, who can use that 16 information, and any guarantee whatsoever that use of 17 that data would be for permissible purposes. So, 18 therefore, it violates the statutes that are 19 implicated.</p> <p>20 Q. Okay. So the position you've articulated 21 is that: If a third party accesses or uses the data, 22 it must be used for one of the purposes permitted by 23 statute?</p> <p>24 A. Well, yes, but also by sharing data, and 25 not -- and doing so in a way that allows for anyone</p>	<p style="text-align: right;">Page 105</p> <p>1 someone else's data on the VoteRef website is 2 violating New Mexico law?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 A. Yeah, I can't draw legal conclusions 5 without -- you know, with just a hypothetical like 6 this. But I imagine, yes, it's possible that they 7 could.</p> <p>8 Q. If they accessed that data, does the use 9 towards which they put, say, another person's data 10 impact whether or not that use is lawful?</p> <p>11 MS. LECOCQ: Objection.</p> <p>12 A. I mean, all of these are very fact 13 specific, right? You'd have to look at who are using 14 it, for what purposes, what controls are taken. And 15 all of that would be part of an analysis done to 16 determine, you know, what position our office would 17 take, or arguably the Secretary of State's Office, 18 too.</p> <p>19 Q. What if, while that data was active, I 20 looked at your information to see if your address was 21 correct. Have I violated New Mexico law?</p> <p>22 MS. LECOCQ: Objection.</p> <p>23 A. You could be.</p> <p>24 Q. And what facts would you need to determine 25 if that was a violation of New Mexico law?</p>

<p style="text-align: center;">Page 106</p> <p>1 MS. LECOCQ: Objection.</p> <p>2 A. Again, I can't draw -- well, there are</p> <p>3 certain elements, obviously, you would have to look</p> <p>4 at in the context of just looking at the data, how it</p> <p>5 was obtained, the circumstances of the person using</p> <p>6 it, what conditions they had that information, all of</p> <p>7 these that are governed by the laws that restrict the</p> <p>8 use of this voter data.</p> <p>9 Q. How many New Mexico voters have canceled</p> <p>10 their voter registration because of VRF's website</p> <p>11 posting voter data online?</p> <p>12 A. I don't know.</p> <p>13 Q. I want to take a step back to Section 5.5</p> <p>14 that we were discussing before. I think you should</p> <p>15 still have a copy in front of you if you need it.</p> <p>16 And I want to ask what state interests are served by</p> <p>17 the restriction in 5.5 about the uses towards which</p> <p>18 data can be put?</p> <p>19 A. So are you asking about legislative intent?</p> <p>20 Q. I'm asking what state interests are served</p> <p>21 by having this restriction in place?</p> <p>22 A. Well, I mean, any intent of law you have to</p> <p>23 do an analysis of instruction, legislative intent,</p> <p>24 and there is policy often written into statutes.</p> <p>25 Some of that can be inferred. I don't recall if</p>	<p style="text-align: center;">Page 108</p> <p>1 Mexico voter data, by signing the affidavit?</p> <p>2 A. Yes, that is true.</p> <p>3 Q. Are there other places that people could</p> <p>4 look to determine what uses are permissible under New</p> <p>5 Mexico law?</p> <p>6 A. There are, and I know we've gone over a few</p> <p>7 of them, conditions and restrictions on the use of</p> <p>8 voter data.</p> <p>9 Q. Are you referring to the statutes that we</p> <p>10 looked at?</p> <p>11 A. Yes.</p> <p>12 Q. Are you aware if there is any publications</p> <p>13 from, let's say the Attorney General's Office, about</p> <p>14 how voter data may or may not be used?</p> <p>15 A. Our office issues a lot of opinions, formal</p> <p>16 public opinions and advisory letters, and has for</p> <p>17 over 100 years. I have not looked through all of the</p> <p>18 opinions to see which ones might be relevant to this.</p> <p>19 So I'm not aware of any off the top of my head.</p> <p>20 Q. What about something short of an opinion,</p> <p>21 like a web page on how it can be used?</p> <p>22 A. I'm not familiar with a web page that's run</p> <p>23 by our office that -- yeah, that provides guidance on</p> <p>24 voter information.</p> <p>25 Q. The second state interest that's been</p>
<p style="text-align: center;">Page 107</p> <p>1 there is a policy statement under these statutes that</p> <p>2 we're dealing with.</p> <p>3 But I can speak generally, the Secretary of</p> <p>4 State's Office is charged with protecting voter</p> <p>5 information and the voting process. Our office is</p> <p>6 charged with upholding state laws, and representing</p> <p>7 state agencies and the decisions that they make when</p> <p>8 they're litigated. And the general public interest</p> <p>9 besides any, you know, statutory language about the</p> <p>10 policy or purpose of an act or these acts, is to</p> <p>11 ensure that this information, which is often highly</p> <p>12 sensitive, is not disseminated in a way that violates</p> <p>13 privacy primarily. And that information is private</p> <p>14 for a reason.</p> <p>15 Q. Okay. I want to walk through the interests</p> <p>16 that have been asserted by the parties in briefing in</p> <p>17 this case. The first is that these restrictions</p> <p>18 ensure that individuals are made explicitly aware of</p> <p>19 the permissible uses of New Mexico voter data by</p> <p>20 signing the affidavit required in 1-4-5.5. Does the</p> <p>21 Attorney General's Office agree that that is a</p> <p>22 signature served by 1-4-5.5?</p> <p>23 A. So what was state interest?</p> <p>24 Q. To ensure that individuals are made</p> <p>25 explicitly aware of the permissible uses of New</p>	<p style="text-align: center;">Page 109</p> <p>1 asserted here is that these restrictions ensure the</p> <p>2 payment of reasonable fees for the production of</p> <p>3 voter data, which fees subsidize the mandatory voter</p> <p>4 registration system. Does the Attorney General's</p> <p>5 Office agree that that is a state interest served by</p> <p>6 the regulations at issue in this case?</p> <p>7 A. Charging a fee for obtaining such data,</p> <p>8 yeah, the office does. And it's not dissimilar at</p> <p>9 all from similar statutory provisions. There are</p> <p>10 hundreds of thousands of professional and</p> <p>11 occupational licenses issued by the state by dozens</p> <p>12 of boards and commissions. That data maintained in</p> <p>13 databases is not available under IPRA. But there is</p> <p>14 a provision in statute that allows the agencies to</p> <p>15 charge fees. And it's for a very similar purpose.</p> <p>16 It's usually for companies selling continuing</p> <p>17 education to licensees. So you can get, through</p> <p>18 inspection of public records requests some of this</p> <p>19 information. But IPRA requests would not provide</p> <p>20 such things as a mailing address, or even an email</p> <p>21 address. They withhold those, and they run queries</p> <p>22 through these databases and charge -- those boards</p> <p>23 and commissions all have rule promulgation authority,</p> <p>24 and set the fees for those lists, usually in the</p> <p>25 rule. And some vary depending upon the size of the</p>

<p style="text-align: right;">Page 110</p> <p>1 list or type of filters. But it's very similar to 2 this type of data.</p> <p>3 Q. How is this interest accomplished? That is 4 we're looking at 5.5, which says you can only use 5 this for certain purposes, and we're looking at 5.6 6 and some other statutes which say how it can be 7 shared. Which one of those protects the Secretary of 8 State's ability to receive fees?</p> <p>9 MS. LECOCQ: Objection.</p> <p>10 A. Which one of these statutes protects their 11 ability? I'd have to look closely. I'm not sure 12 where the authority with charging fees comes to the 13 Secretary of State, if it's something that's 14 established. Where it's established in the statute 15 or authorized in the statute, I'd have to look at the 16 full statute to confirm.</p> <p>17 Q. Would you agree with me that if a requester 18 who obtains the voter data from the Secretary of 19 State, but then transfers that to a third party, the 20 Secretary of State is not collecting a fee from that 21 third party under that issue?</p> <p>22 A. Yeah, because the Secretary of State at 23 that point does not have control over any further 24 request from a third party.</p> <p>25 Q. The final state interest that's been</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Well, that's just an example, because that 2 means anyone could access it. I can go and look at 3 the office of the Attorney General's website, and I 4 don't have to be a member or subscribe or anything 5 else to access it. But that doesn't mean that you 6 couldn't also still publish to the public, even if 7 there were other barriers, whether it's a 8 subscription, fee based, or other types of, you know, 9 consents. It would be very much, you know, a fact 10 analysis on a case-by-case basis.</p> <p>11 Q. I understand that. But you seem to be 12 focusing a fair amount on whether or not someone is 13 paying to access the data. Why does that matter 14 under New Mexico law?</p> <p>15 A. It doesn't. It's just the easiest example 16 I could think of to make a point.</p> <p>17 Q. So if VoteRef.com had just charged people a 18 dollar to access the website, would it then not be 19 unlawful use?</p> <p>20 MS. LECOCQ: Objection.</p> <p>21 A. Yeah, I'm not going to draw a legal 22 conclusion with this either. But the point is that 23 the position our office and the Secretary of State 24 has taken is that, by providing this information in a 25 public forum, defeats the purpose of the control and</p>
<p style="text-align: right;">Page 111</p> <p>1 asserted in this case says that because voter data 2 produced at any single moment represents a, quote, 3 "snapshot of the voter files as of that moment," 4 whereas, voter files may change -- sorry, one 5 second -- I will happily come back to that when I 6 find the page.</p> <p>7 We talked a little bit about the 8 publication of voter data online. And it seems to be 9 the position taken in this case, and that you've 10 referenced a few times here, is that publication to 11 the -- and I'm quoting here -- "the general public is 12 unlawful." What does it mean to publish to the 13 general public?</p> <p>14 MS. LECOCQ: Objection.</p> <p>15 A. Yeah, I mean, that would be, of course, 16 dependent upon the specific facts. But, generally, 17 published in a way that anyone in the public can 18 access, or even -- you know, I mean, that's in the 19 purest sense, posting to a website that doesn't have 20 a pay wall. I think you could also publish to the 21 public in a more limited context. But, of course, 22 all that would be a case by case, you know, analysis.</p> <p>23 Q. You said, "publishing to a website that 24 doesn't have a pay wall." Why does the pay wall 25 matter?</p>	<p style="text-align: right;">Page 113</p> <p>1 protection that's provided for under these statutes; 2 that this type of data can only be used for limited 3 purposes, and that the Secretary of State, by 4 statute, is charged with ensuring that that data is 5 protected. And by publishing it in a manner 6 available to the public, even with conditions, you 7 know, defeats the purpose of that statute.</p> <p>8 Q. But I suppose by saying, you know, 9 publication to the general public that seems to imply 10 that publication is something less than the general 11 public could perhaps remedy that issue. So I'm 12 trying to understand what general public means as 13 you've said and as your counsel has used it in this 14 case.</p> <p>15 So, what if VRF's data required someone to 16 sign up but not pay money to access? Is that 17 information to the general public?</p> <p>18 A. I can't come to a legal conclusion or any 19 type of definitive conclusion, because this would be 20 subject to looking at all the facts on a case-by-case 21 basis. But what I think is important here is that, 22 whether or not there is control over the use of this 23 data for intended purposes is the purpose of this 24 statute and these restrictions on the use of this 25 data.</p>

<p style="text-align: right;">Page 114</p> <p>1 And so, if a requester takes that data and 2 uses it in a way where there is no longer the ability 3 to control its use, and ensure that the data is not 4 being used in an unauthorized way, then that would 5 defeat the purpose of all of these conditions on its 6 use, and the process that the Secretary of State 7 follows by law, you know, to share this data to 8 requesters when requested.</p> <p>9 Q. I understand you keep saying that this is 10 to, you know, serve the purpose of these laws. But 11 what New Mexico statute tells someone that 12 publication to the general public is unlawful, but 13 publication to something less than the general public 14 might not be?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. Yeah, I'm not really sure -- I'll try to be 17 helpful in answering this, because I think that there 18 is -- to just make the point that I'm trying, is 19 that -- so if a political campaign, a candidate's 20 campaign requests this information for purposes of 21 sending out mailers to the individual voters that are 22 registered to vote, maybe of a certain party in the 23 district that they are running in, one person could 24 request it, but they might put it on a Google doc to 25 share it with somebody else in the campaign, to then,</p>	<p style="text-align: right;">Page 116</p> <p>1 it violated any of these laws. 2 Q. There has been two positions -- or at least 3 I view them as two positions -- that have been taken 4 by the defendant in this litigation, which is, one, 5 that data cannot be shared outside of an entity. 6 Okay.</p> <p>7 The second, kind of more recent iteration 8 is that data cannot just be posted for the general 9 public. But at least in your example of a political 10 party or campaign, those kind of seem to bleed into 11 one another, because your explanation of publication 12 to the general public relied on the fact they weren't 13 sharing it outside of their own people.</p> <p>14 So I suppose my question is: Are those two 15 concepts the same -- let me be very specific here -- 16 the concept that you cannot share the data outside of 17 an entity or organization that requests it, and the 18 concept of publication to the general public?</p> <p>19 A. I mean, sharing outside of an entity is 20 also, I mean, subject to interpretation, right? I 21 mean, you could share with a contractor, right? But 22 if they're under contract are they acting in an 23 agency capacity? Is there still control? Are they 24 using it for the same purposes, right? I mean, there 25 are not black-and-white answers to many of these</p>
<p style="text-align: right;">Page 115</p> <p>1 you know, actually -- or a couple people that are 2 helping do mail merges, and you know, stamp envelopes 3 and send out these mailers.</p> <p>4 But you know, that's a very different 5 analysis than sharing it with anyone outside of the 6 control or nebulous, not in an agency capacity, which 7 was what was being done here.</p> <p>8 So that's the distinction that I'm trying 9 to make, is that there are examples that are very 10 narrow and limited of sharing, that are a very 11 different set of facts than these hypotheticals that 12 we're talking about.</p> <p>13 Q. So VRF has alleged in this lawsuit that one 14 of the projects they undertake is that internally, 15 without sharing any data with any member of the 16 general public, they conduct an analysis that looks 17 at voter history to see if there are what they call 18 "discrepancies" in that data. So is VRF's internal 19 sharing of that data for purposes of conducting this 20 analysis an unlawful use of that data?</p> <p>21 MS. LECOCQ: Objection.</p> <p>22 A. Yeah, I mean, without knowing the facts of 23 exactly what's going, and assuming everything is 24 fine, and arguably, yeah, it might not be. But I 25 can't say definitively one way or the other whether</p>	<p style="text-align: right;">Page 117</p> <p>1 questions, because again, they're subject to factual 2 analysis, which is going to be different in every 3 case, right?</p> <p>4 I can't definitively say that sharing 5 outside of an agency violates this law, because I can 6 use that example, as just one of -- well, oh, there 7 is that exception, right, it's an agent, right?</p> <p>8 Agency relationship, is that enough to say: Well, 9 it's outside entity, but closely enough that it's 10 okay. I mean, again, all those are, you know, 11 fact-based analysis.</p> <p>12 Q. You kind of hinted at this, but are you 13 aware that most political parties in New Mexico 14 request voter data from the Secretary of State?</p> <p>15 A. I mean, nobody has told me that, but I 16 would assume that, based off of how campaigns work, 17 yeah.</p> <p>18 Q. Well, take it for what it's worth, but I'll 19 represent to you that the Republican, Democratic, 20 Libertarian -- I'll stop there, because I can't state 21 for sure -- have all requested voter data from the 22 Secretary of State, say, since the beginning of this 23 litigation, or at least from the chart that we were 24 provided by the parties. If the party requesting 25 that data gives it to a canvasser to go knock on</p>

<p style="text-align: center;">Page 126</p> <p>1 Q. If we go to the next answer provided, it 2 says: "Answer: 'Publishing online,' could be 3 construed to mean anything from making an internal 4 list of registered voters for use in an internal 5 website, or secured website, or maintaining that 6 information on an internal website for others to 7 access internally, such as on Google Drive, or 8 sending mass emails to voters as part of a campaign. 9 The AG believes this type of 'publishing' used within 10 the context of permissible government or election 11 campaign use, is acceptable, whereas 'publishing' to 12 the general public is not." Did I read that correct? 13 A. Yes. 14 Q. Is that the position of the AG's Office as 15 we sit here today? 16 A. I believe it is. 17 Q. What's the difference between an internal 18 website and an external website? 19 A. I think, again, that would be a 20 fact-specific analysis, right? What type of 21 protections? You know, it's not always black and 22 white. But I think, generally, that would be a 23 website that is not accessible except to people 24 within that entity. And, you know, an external site 25 would be something that was generally public, you</p>	<p style="text-align: center;">Page 128</p> <p>1 contracted to coordinate mailings, right, and has 2 that close agency relationship or contractor 3 relationship. So, again, I don't think you can just 4 use one example and say definitively this applies to 5 any type of situation.</p> <p>6 Q. You seem to be getting back to the idea of, 7 you know, internal and external to the organization 8 as kind of all encompassing for what publishing is 9 and is not allowed. And I'm trying to understand if 10 the internal, external, you know, analysis is one 11 factor, and this general, public, unsecure website, 12 internal/external website, is a different factor. If 13 those are really the same thing, and the means of 14 keeping the data within the entity is to have a 15 password protected website for that entity's members. 16 So my question is: If VoteRef's website 17 was secured so that only people that want to 18 volunteer to further VoteRef's mission can sign up 19 for user name and password access to data, is that 20 permissible? 21 A. Again, it would have to depend on the 22 circumstances and the control of that data, and if 23 that even falls within the permitted uses. 24 Q. Let's assume here that it is being used by 25 the end user for a permitted purpose. Does the fact</p>
<p style="text-align: center;">Page 127</p> <p>1 know, generally available to the public. 2 Q. Does it have to be password protected to be 3 an internal website? 4 A. Again, it's a fact-based analysis. I think 5 that's just one factor that would have to be 6 considered to whether or not, you know, something is 7 publicly available and shared outside of an entity or 8 not. 9 Q. And I'm sure you can appreciate that I'm 10 trying to figure out the terms that your office used, 11 and just reaffirm here is your position, actually 12 means, because, you're right, internal to me doesn't 13 really have a meaning without knowing what your 14 office's position on what "internal" means. 15 So, again, I'm just going to ask: Is it 16 your office's position that a -- let's say a website 17 that requires someone have a user name and password, 18 is that an internal website or external website? 19 A. It depends on who is using it. 20 Q. Okay. The people using it are people that 21 signed up for a user name and password? 22 A. I mean, that could be limitless people that 23 are outside of the entity, with no control over their 24 use, or it could be, you know, campaign 25 representatives or a contractor who has been</p>	<p style="text-align: center;">Page 129</p> <p>1 that the website requires a user name and password 2 mean that it's lawful to use it in that manner? 3 MS. LECOCQ: Objection. 4 A. Yeah, because I can't draw a conclusion 5 without knowing all of the facts, because I think the 6 facts of who has access and what controls are still 7 available, and assurances that there is that 8 connection with the organization; it's not just 9 anyone, right? And that there is not a risk of that 10 information being used for unlawful purposes. So I 11 think all of that would be very -- you know, would 12 require a thorough review of the circumstances and 13 the facts and the scope of the use and the scope of 14 the individuals with access. 15 Q. Can anyone volunteer to do work for a 16 campaign? 17 A. I don't think I could just go and volunteer 18 for a campaign and they would give me access to this 19 type of information, if that's what you're asking. 20 Q. That wasn't my question, but I appreciate 21 that answer. 22 You seem to draw a distinction between 23 whether VoteRef is just providing data under this set 24 of facts to anyone. But what's the difference 25 between someone saying: I want to volunteer for a</p>

<p style="text-align: right;">Page 130</p> <p>1 campaign to use it for campaign purposes, and I want 2 to volunteer to help VoteRef use it for a purpose 3 which, for the sake of this question, we're presuming 4 is permissible?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 A. I think that type of use, there are clear 7 distinctions. And a volunteer -- campaigns don't 8 just let anyone volunteering for the campaign get 9 access to all of that information. It's maintained, 10 and you know, they can't then -- there is no 11 protections -- or there would be protections, 12 arguably, for that information only to be used for 13 that limited purpose. And it's within that nebulous 14 of the campaign. Campaigns don't post this 15 information on their website and say: Anybody that 16 wants to volunteer, here's all of this information, 17 and you can go use it however you see fit. And we 18 don't have examples of that that I'm aware of 19 happening, like VoteRef is doing in this case.</p> <p>20 Q. What if VoteRef was selling the data to 21 third parties who agreed by contract that they would 22 only use it for permissible purposes?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. Yeah, again, I can't speculate to a 25 conclusion. I mean, that's just not relevant to the</p>	<p style="text-align: right;">Page 132</p> <p>1 raised. What type of control mechanisms are there? 2 And who, knowingly or not, allowed this information, 3 which is protected, to be used for unlawful purposes? 4 So I think it would be a very fact-specific analysis.</p> <p>5 Q. So I understand you as saying that the 6 legality of the transfer of the data, at least in 7 part, hinges on how the data is going to be used by 8 the recipient. Am I correct in saying that?</p> <p>9 A. Yeah.</p> <p>10 Q. If a citizen contacts VRF and says: Hey, I 11 looked at your website. My data is incorrect. And 12 VRF informs, let say the relevant county clerk, that 13 the data is incorrect. Has VRF violated the law by 14 pointing out that the inaccuracy to the county clerk?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. Yeah, I can't get into hypotheticals. One, 17 I mean, this isn't any type of determination that the 18 Secretary of State's Office or our office has made. 19 And, you know, I can't speak to a legal conclusion. 20 I mean, that's going to be something that's argued in 21 the pleadings in this case.</p> <p>22 Q. But do you understand that the allegation 23 that VRF has made in this case is that that is 24 precisely why they have this website, is to identify 25 discrepancies and communicate those discrepancies, or</p>
<p style="text-align: right;">Page 131</p> <p>1 facts in this case. But I'd have to look more 2 closely at the statute and the rules, and what 3 amounts to an agreement with the Secretary of State's 4 Office, and the use for this data, and whether or not 5 that type of use, you know, subsequent sale or 6 distribution is authorized. I think it clearly would 7 go against the statutes, arguably the statutory and 8 legislative intent of ensuring that the Secretary of 9 State's Office is the one that maintains control and 10 protection over this information. And just by 11 allowing it to be disseminated, without these 12 requests to the Secretary of State's Office, 13 following this process that's provided in law, 14 would -- you know, it certainly violates the intent 15 as well as the process -- the intent of the law and 16 the process set up by the Secretary of State.</p> <p>17 Q. Can VRF share the data that it has in its 18 possession with its own employees?</p> <p>19 MS. LECOCQ: Objection.</p> <p>20 A. That would first depend upon whether or not 21 the use is permitted, right, by law. Our contention 22 is that it still is not. And it would depend upon 23 what mechanisms there are to control, right? Just 24 like a campaign that started sharing this information 25 broadly -- I mean, the same questions would be</p>	<p style="text-align: right;">Page 133</p> <p>1 errors or whatever you want to call them, to the 2 relevant officials so they can be remedied?</p> <p>3 A. I understand that's the argument being 4 raised, yeah.</p> <p>5 Q. Okay. If we assume the truth of that 6 argument, if that is actually how the data is being 7 used, is that permissible under 1-4-5.5?</p> <p>8 MS. LECOCQ: Objection.</p> <p>9 A. Yeah, I mean, again, I think that this is 10 addressed in our arguments in the case and the 11 position taken by the Secretary of State as the 12 decision-maker in denying this information or this 13 data. But, yeah, I think that that is for unlawful 14 purposes.</p> <p>15 Q. Okay. I put a binder of transcripts in 16 front of you, and I put one in front of your counsel 17 as well. If we can turn to that binder.</p> <p>18 MR. MUELLER: I don't know -- I mean, these 19 are all in the record. We can label this as an 20 exhibit if we want. If you want to deal with a copy 21 of it, you can.</p> <p>22 MS. LECOCQ: I don't think it's necessary.</p> <p>23 MR. MUELLER: I don't think so either.</p> <p>24 Q. Okay. Let's start with the very first 25 transcript. This is from the May 17, 2022 hearing on</p>

<p style="text-align: right;">Page 142</p> <p>1 "The basis for the Attorney General's assertion that 2 VRF, or anyone acting in concert with it, violated 3 New Mexico law or may have violated New Mexico law."</p> <p>4 Okay. I want to move on to the second 5 transcript. That's the 6/15/22. This is a 6 continuation of the preliminary injunction hearing. 7 Looking at page 225, line 20. Let me know when 8 you're there.</p> <p>9 A. Yeah, I've read it.</p> <p>10 Q. I'm going to read, starting at page 225, 11 line 20. And I will first represent that if you go 12 back to page 223, this is Ms. Serafimova speaking. 13 "Now, on a substantive challenge, again, we do -- 14 given our interpretation of 5.5, we do concede that 15 plaintiffs have not violated any of the use 16 restrictions, because those use restrictions do not 17 prohibit uploading the data to a website. That is 18 under 5.36. So that doesn't change our theory."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Was that the Attorney General's position at 22 the time of this hearing?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. Again, you know, I was not -- it was a 25 different administration, and this individual is no</p>	<p style="text-align: right;">Page 144</p> <p>1 complicated question, given both the criminal and 2 civil angles from this. But I mean, generally, the 3 positions are: The actions taken, and the use of 4 this information is not in compliance with New Mexico 5 law. I mean, individual legal arguments, you know, I 6 think that's separate. But generally, yeah.</p> <p>7 Q. Okay. Then, I'm going to ask you to look 8 at 1-4-5.6 and 1-5-22 as we sit here now. We've 9 already looked at these and confirmed the language, 10 so I'm not going to belabor that. Is it the Attorney 11 General's position, as we sit here today, that 12 1-4-5.6 incorporates the prohibitions of 1-5-22(a) to 13 make Voter Reference Foundation's publication of data 14 unlawful?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. I can't draw that conclusion.</p> <p>17 Q. Are you aware if that's a position that's 18 been taken in this case, let's say, since the filing 19 of the first amended complaint?</p> <p>20 A. I'm aware of competing arguments regarding 21 the applicability of the criminal penalties and 22 competing arguments about what applies and what 23 doesn't. But I can't recall right now where we're 24 currently at with this argument.</p> <p>25 Q. What do you mean "competing arguments"?</p>
<p style="text-align: right;">Page 143</p> <p>1 longer employed by our office. I presume there is no 2 reason that I have, that I'm aware of to, you know, 3 challenge any positions that she took.</p> <p>4 Q. Is the Attorney General's Office willing to 5 state, at least prior to the filing of the first 6 amended complaint, that the representation made by 7 counsel for the Attorney General accurately reflect 8 the positions of the Attorney General's Office?</p> <p>9 A. I couldn't answer that without consulting 10 with counsel.</p> <p>11 Q. So you're not willing to state whether 12 these are accurate representations of the Attorney 13 General's position?</p> <p>14 MS. LECOCQ: Objection. I think -- if it 15 helps, I think we can stipulate that this was the 16 reflection of the Attorney General Hector Balderas at 17 the time that this was done, yes.</p> <p>18 Q. Has the Attorney General's position on this 19 case changed since the new Attorney General took 20 over?</p> <p>21 A. What do you mean by "position"?</p> <p>22 Q. Position on whether VRF has engaged in 23 unlawful activity.</p> <p>24 MS. LECOCQ: Objection.</p> <p>25 A. Yeah, I mean, I think that that's a</p>	<p style="text-align: right;">Page 145</p> <p>1 You mean between plaintiff and defendants --</p> <p>2 A. Yeah.</p> <p>3 Q. -- or internally?</p> <p>4 A. Plaintiffs and defendants.</p> <p>5 Q. Are you aware that VRF has made requests 6 for voter data to the Secretary of State, let's say, 7 since it acquired the data from Local Labs?</p> <p>8 A. Yes.</p> <p>9 Q. Are you aware that all those requests have 10 been denied?</p> <p>11 A. Yes.</p> <p>12 Q. I think we are moving into our next 13 confidentiality segment here, just a warning there. 14 Not there quite yet, but these questions might bleed 15 over pretty quickly.</p> <p>16 (Exhibit 11 marked.)</p> <p>17 Q. Handing you what I've marked as Exhibit 11. 18 Have you seen this document before?</p> <p>19 A. I don't -- it looks familiar. It may have 20 been in one of the many hundreds of pages of 21 documents that I reviewed that included some email 22 correspondence. But I can't say definitively. I 23 think that this was in there.</p> <p>24 Q. Okay. I'm just going to read from the 25 first line here. It says, "Per Dylan's contact with</p>

<p style="text-align: right;">Page 154</p> <p>1 A. I mean, that's stated in this letter, so 2 yes.</p> <p>3 Q. Okay. The second to the last paragraph, 4 "To further clarify another point, you have not 5 complied with NMSA 1978 Section 1-4-5.5 in requesting 6 voter data, by not submitting the required 7 affidavit."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. So you would agree with me that this 11 request was denied, at least in part, because no 12 affidavit was provided?</p> <p>13 A. Yeah, that's what it says.</p> <p>14 (Exhibit 13 marked.)</p> <p>15 Q. I'm handing to you what we've marked as 16 Exhibit 13. Have you seen this document before?</p> <p>17 A. It also looks familiar. Everything is 18 starting to blur together a little bit, but it looks 19 like one of the documents that was included in the 20 documents I've reviewed for this deposition.</p> <p>21 Q. Okay. Can you tell me what this document 22 is?</p> <p>23 A. It is a letter from your law firm to the 24 Secretary of State.</p> <p>25 Q. Would you agree with me -- well, let me</p>	<p style="text-align: right;">Page 155</p> <p>1 recently published voter data in New Mexico, VRF 2 intends to publish the requested information online 3 for election related purposes, but it will only 4 publish the personal information of voters online if 5 VRF is granted relief in -- and then it lists this 6 case. And it says, "or in any other legal 7 proceeding."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. And so would you agree with me that VRF is 11 representing, through counsel here, that it will not 12 publish the personal information of voters online 13 unless a court gives them relief saying they can do 14 so?</p> <p>15 A. That's what it says.</p> <p>16 Q. I'm going to continue on the last 17 paragraph. "For its second project, VRF intends to 18 analyze the records, information, and data provided 19 in response to the above requests in order to engage 20 in a discrepancy review of the New Mexico voter 21 rolls. VRF intends to publish this analysis online 22 without disclosing the personal information of any 23 voter. VRF will comply with this 24 non-public-disclosure promise for the data it uses on 25 the second project regardless of whether it prevails</p>
<p style="text-align: right;">Page 155</p> <p>1 read the subject line. It says, "Notice of Violation 2 of National Voter Registration Act and Request for 3 Records." Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Would you agree with me that this, at least 6 on its face -- you can characterize it how you 7 want -- but that this characterizes itself as a 8 request for voter records under the National Voter 9 Registration Act?</p> <p>10 A. Yeah, I mean, that's the subject. It 11 states that it's a notice of violation, or alleged 12 violation, and also a request for records.</p> <p>13 Q. Would you agree with me as well that this 14 is a request for records under Section 1-4-5.5, New 15 Mexico statute?</p> <p>16 A. Yes.</p> <p>17 Q. And it would perhaps help to point your 18 attention to page 4 where it says, "Requests for 19 records."</p> <p>20 A. Yeah.</p> <p>21 Q. I'd like to draw your attention to the 22 second to the last paragraph on page 4. It says, 23 VRF's intended election use comprises two distinct 24 projects. For its first project, just as VRF 25 publishes voter data for many other states, and as it</p>	<p style="text-align: right;">Page 157</p> <p>1 in the federal litigation. And again, for the sake 2 of clarity, no personal information of any voter will 3 be published online unless VRF is granted relief in 4 the federal litigation or in any other legal 5 proceeding."</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. And you'll agree that VRF, through counsel, 9 is promising there that it will not publish voter 10 data online absent a court order telling them they 11 can do so?</p> <p>12 A. That's what it says.</p> <p>13 Q. Okay. If you look at page 5 of this, 14 second paragraph, it says, "Signed voter information 15 authorization forms for each of the above requests 16 are attached to this letter as Exhibit B."</p> <p>17 Did I read that correctly?</p> <p>18 A. I'm sorry, which page are you looking at?</p> <p>19 Q. Page 5, second paragraph.</p> <p>20 A. Okay.</p> <p>21 Q. "Signed voter information authorization 22 forms for each of the above requests are attached to 23 this letter as Exhibit B."</p> <p>24 Did I read that correctly?</p> <p>25 A. Yes.</p>

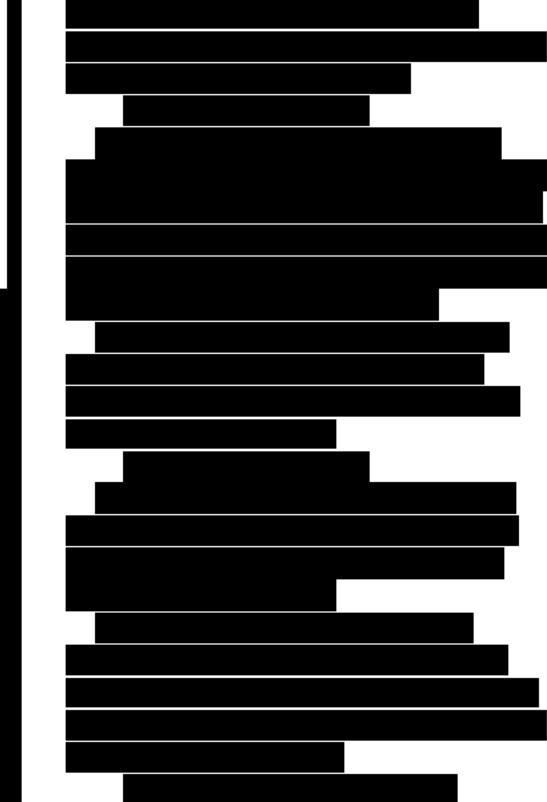
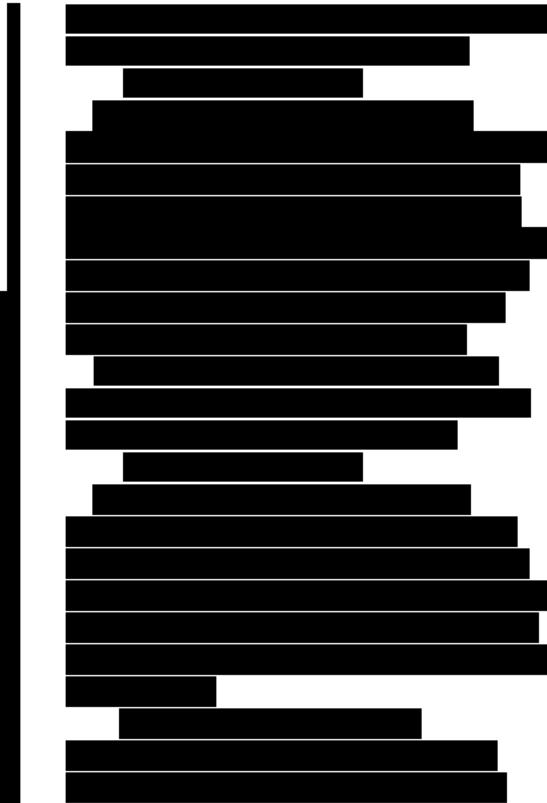
<p style="text-align: right;">Page 158</p> <p>1 Q. And if we flip -- it looks like maybe the 2 Exhibit B label got cut off a little bit. 3 A. Yes. 4 Q. But you'll see two documents there. Can 5 you tell me what those documents are? 6 A. They say, "Voter Information 7 Authorization." It's a form from the Secretary of 8 State. 9 Q. Okay. And what is this form used for? 10 A. I presume it's used for requesting voter 11 data. 12 Q. And you'll agree with me -- if you look at 13 the section on each of these, it says, "Information 14 of Requester," it says, "Name, Gina Swoboda, Voter 15 Reference Foundation. Is that correct? 16 A. Yes. 17 Q. Just below that in the Authorization, 18 you'll see that Gina Swoboda has signed as the 19 signature of the requester; is that correct? 20 A. Yes. 21 Q. Was VRF given voter data in response to 22 that request? 23 A. I don't believe so. 24 Q. Do you have any reason to think that it 25 was?</p>	<p style="text-align: right;">Page 160</p> <p>1 response? 2 A. Dylan Lange. 3 Q. Okay. I want to draw your attention to the 4 last paragraph on page 2. It says, "With respect to 5 item number 2 and the affidavit you submitted as 6 required by New Mexico law, in the notice VRF states 7 that it 'intends to publish the requested information 8 online for election related purposes, but it will 9 only publish the personal information of voters if 10 VRF is granted relief in' -- citing this case -- 11 -- or in any other legal proceeding." 12 Did I read that correctly? 13 A. Yes. 14 Q. Skipping the citation there, it says, "As 15 you know from the federal litigation and otherwise, 16 it is our position that publishing any" -- with 17 emphasis on the "any" there -- New Mexico voter data 18 on a website is a violation of the New Mexico 19 Election Code that carries criminal liability." 20 Did I read that correctly? 21 A. Yes. 22 Q. At the time this response was sent, did the 23 Attorney General's Office agree with that position? 24 A. I think that would reveal any privileged 25 communication that we would have with the Secretary</p>
<p style="text-align: right;">Page 159</p> <p>1 A. No. 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 MR. MUELLER: I think we're outside of the 17 confidentiality. That's the last question. 18 (A discussion was held off the record.) 19 (Exhibit 14 marked.) 20 Q. I'm handing you what we've marked as 21 Exhibit 14. Would you look at that? When you've had 22 a chance to review I'll ask if have you seen this 23 document? 24 A. I believe I have. 25 Q. And can you tell me what this document is? A. It's a letter in response to the request that we were just looking at from the Secretary of State's Office. Q. Okay. And who is the author of this</p>	<p style="text-align: right;">Page 161</p> <p>1 of State's Office. 2 Q. I'm not asking what advice you gave them. 3 I'm asking, as a defendant and litigant in this case, 4 if that is -- if that comports with the position that 5 the Attorney General was taking? 6 A. Our position is that we support the 7 Secretary of State's Office. And so, you know, had 8 we disagreed, you know, I think you could infer that 9 we were having disagreement with our client. So, 10 yeah, I mean we certainly support the position taken 11 by the Secretary of State's Office, and the decision 12 that they made, in our role representing the state 13 and that agency. 14 Q. We can agree that the Secretary effectively 15 denied this request and did not produce voter data to 16 Voter Reference Foundation; is that correct? 17 A. Yes. 18 Q. Okay. I want to compare the denial of the 19 October 18th request, that we just looked at, with 20 the November 17th letter, to the denial here. 21 So we established that in Mr. Lange's 22 November 17, 2022 letter, two of the reasons for 23 which that request was denied -- we'll start with the 24 first one -- it says, "You have not indicated that 25 you will not post any voter data online, and based on</p>

<p style="text-align: center;">Page 166</p> <p>1 different entities that use, share, and even sell 2 voter data, certainly relates to the claims in our 3 case, including viewpoint discrimination and the 4 defenses raised by the parties in this case, one of 5 which is on appeal, about how we must show disparate 6 treatments as to us and other entities. So I would 7 say that there is a category that says, you know, 8 claims and defenses raised in the litigation. I 9 think this calls for -- and it's been raised several 10 times throughout this case. I don't think I'm 11 surprising you by asking you about it here. I 12 believe it's also in a discovery response. So to the 13 extent we've asked for testimony about discovery 14 responses, then I think we're there.</p> <p>15 MS. LECOCQ: Mr. Dworak has certainly 16 reviewed the discovery responses. Do you know which 17 one?</p> <p>18 MR. MUELLER: I think as early as 19 Interrogatory 1.</p> <p>20 Q. Interrogatory No. 1. Do we have a copy of 21 this? It says, "State whether you have conducted any 22 investigation or made any inquiry into the use or 23 sharing of voter data by Catalyst, i360, or any other 24 commercial entity that has purchased voter data from 25 New Mexico" -- goes on.</p>	<p style="text-align: center;">Page 168</p> <p>1 aware of whether or not i360 sells voter data that it 2 receives from the New Mexico Secretary of State's 3 Office? 4 A. No, not that I can recall that the office 5 generally is aware of any investigation or knowledge 6 of the details. 7 Q. Same question with regard to Aristotle. Is 8 the Attorney General aware that it sells voter data 9 that it receives from the New Mexico Secretary of 10 State? 11 A. The same answer, no. 12 Q. Has the Attorney General ever investigated 13 any entity, other than VRF, for how it uses voter 14 data requests from the Secretary of State? 15 MS. LECOCQ: Objection. Go ahead. 16 A. Yeah, I'm not aware of any referral that 17 would have resulted in any type of investigation of 18 that sort. 19 Q. Do you have a copy of the supplemental 20 interrogatories? And we can mark that as Exhibit 15. 21 (Exhibit 15 marked.) 22 Q. And I'll represent that this document -- 23 thank you for marking that -- it is Defendant Raul 24 Torres's First Supplemental Response to Plaintiff 25 Voter Reference Foundation's First Interrogatories,</p>
<p style="text-align: center;">Page 167</p> <p>1 And then there is an answer from the 2 Attorney General's Office, which I don't want to read 3 out loud until I ask about it.</p> <p>4 MS. LECOCQ: Sure. Let me just refresh his 5 recollection with this. Sorry, go ahead.</p> <p>6 MR. MUELLER: Just to clarify, did he hand 7 you the supplemental responses or the original? Is 8 it the 3/8 or the 10/20? They're not different, but 9 it's just important.</p> <p>10 MS. LECOCQ: This is response, so this is 11 the initial, not supplemental.</p> <p>12 MR. MUELLER: I'll note that they're not 13 different. But I want to note that they're not 14 different.</p> <p>15 MS. LECOCQ: That's fine.</p> <p>16 Q. Okay. So going back to my question, has 17 the Attorney General ever investigated -- let me 18 backtrack there. Is the Attorney General aware of 19 whether Catalyst sells voter data that it receives 20 from the Secretary of State's Office?</p> <p>21 A. Not that I'm aware of.</p> <p>22 Q. And is that the office or is that you 23 speaking individually?</p> <p>24 A. That's me speaking on behalf of the office.</p> <p>25 Q. What about i360? Is the Attorney General</p>	<p style="text-align: center;">Page 169</p> <p>1 Requests for Production and Requests for Admission. 2 Do you agree with me that that is what this document 3 is?</p> <p>4 A. Yes.</p> <p>5 Q. And if you'd look at -- if you look at the 6 very last page, the certificate of service, do you 7 agree with me that these were served on -- or 8 produced to Voter Reference Foundation on March 8, 9 2023?</p> <p>10 A. Yes.</p> <p>11 Q. Directing your attention to Interrogatory 12 No. 1 -- that's on page 4 -- Interrogatory No. 1 13 says, "State whether you have conducted any 14 investigation or made any inquiry into the use or 15 sharing of voter data by Catalyst, i360, or any other 16 commercial entity that has purchased voter data from 17 New Mexico."</p> <p>18 Did I read that correctly?</p> <p>19 A. Did you say Interrogatory No. 4 or 1?</p> <p>20 Q. I said 1 on page 4.</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. And then it says -- well, it says, "If 23 answered" -- skip that part. You'll note that there 24 is two objections made, but then a response is given 25 subject to that objection. Am I characterizing that</p>

<p>1 correctly?</p> <p>2 A. Yes.</p> <p>3 Q. And that response says, "Without waiving, 4 and subject to, the foregoing general and specific 5 objections, defendant has not received a referral 6 from a state or county elections agency or a citizen 7 complaint concerning the above-referenced entities. 8 that defendant has not conducted an investigation or 9 inquiry into the above-referenced entities does not 10 preclude defendant from doing so."</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. You'll agree with me that this is a 14 supplemental response that, as we noted, was served 15 last week?</p> <p>16 A. Yes.</p> <p>17 Q. And I'll represent to you that the initial 18 response to this interrogatory was served on October 19 20, 2022. Would you agree with me that the response 20 has not changed from October 20, 2022 to March 8, 21 2023? And perhaps it would be helpful -- I want to 22 find it to show you. On the requests that were 23 supplemented on March 8, it's noted that there is a 24 supplemental response.</p> <p>25 So taking a step back, can we agree that</p>	<p>1 of those three entities to the attention of the 2 Attorney General?</p> <p>3 A. Not that I'm aware of. Although, 4 they're -- yeah, not that I'm aware of. I mean -- 5 and that's what our answer says, is that we haven't 6 had any referrals or complaints provided to our 7 office. So I think that's consistent with that 8 answer.</p> <p>9 Q. What would it take Voter Reference 10 Foundation giving the AG about these entities for the 11 AG to be concerned that they are selling voter data?</p> <p>12 MS. LECOCQ: Objection.</p> <p>13 A. Again, I think a lot of that is very fact 14 specific. And what complicates this is the ongoing 15 litigation. Defenses raised in litigation are 16 treated a little bit differently, obviously, than a 17 complaint filed or referral from another state agency 18 or a complaint filed by a member of the public or any 19 entity through our complaint process. So, I mean -- 20 and that's how many complaints come through our 21 office. They come through, you know, either a form 22 filled out on our website or by referral from another 23 government entity.</p> <p>24 (Exhibit 16 marked.)</p> <p>25 Q. I'm going to hand you what I've marked</p>
<p>Page 171</p> <p>1 there is no supplemental response provided to 2 Interrogatory No. 1?</p> <p>3 A. That's correct.</p> <p>4 Q. So the Attorney General's response to that 5 was the same on October 20, 2022 and March 8, 2023?</p> <p>6 A. Yes.</p> <p>7 Q. Are you aware that these entities were 8 specifically identified to the Secretary of State, 9 the Attorney General, and the Court at the 10 preliminary injunction hearings held last summer?</p> <p>11 A. I'm generally aware that -- I mean, 12 throughout this -- that they've been mentioned, and 13 these questions have been asked.</p> <p>14 Q. Does the Attorney General's Office consider 15 VRF's identification of those entities to be a 16 citizen complaint?</p> <p>17 MS. LECOCQ: Objection.</p> <p>18 A. Yeah, I think that would -- what 19 constitutes a citizen's complaint, and what happens 20 from complaints or information received to us -- and 21 we generally know that just raising an allegation or 22 issue in an ongoing case or pleading would not 23 generally constitute any type of formal complaint 24 with our office.</p> <p>25 Q. Has the Secretary of State ever brought any</p>	<p>Page 173</p> <p>1 as -- pretty poorly -- as Exhibit 16. Once you've 2 had a chance to review it, can you tell me if you've 3 seen this document before?</p> <p>4 A. No, I don't believe I've ever seen this.</p> <p>5 Q. Just on its face, can you tell me what this 6 document purports to be?</p> <p>7 A. I mean, having never seen it before, it's a 8 little hard for me to do that. But it just says it's 9 a "Declaration of Records Custodian of Aristotle 10 International, Inc.," and there are a number of -- 11 looks like screen shots or -- yeah, screen shots -- 12 from some websites.</p> <p>13 Q. And if we look at the second page of the 14 declaration, will you agree with me that it is signed 15 by a J. Blair Richardson, Jr., who at least purports 16 to be general counsel for this entity?</p> <p>17 A. Yeah, that's what it says.</p> <p>18 Q. Okay. I want to draw your attention to 19 attachment number 2. On page 1, it identifies 20 attachment 2 as, "Aristotle's Test 21 Voterlistsonline.com sales order and agreement used 22 for Aristotle customers wishing to purchase access to 23 New Mexico voter data."</p> <p>24 Did I read that description on page 1 25 correctly?</p>



45 (Pages 174 to 177)

<p style="text-align: center;">Page 178</p> 	<p style="text-align: center;">Page 180</p>  <p>17 Q. Did the Attorney General's Office know who 18 Aristotle was before today? 19 MS. LECOCQ: Objection. 20 A. So, having refreshed my memory, these 21 entities were mentioned in discovery. So, I mean, at 22 least that knowledge. I'm not aware of any – you 23 know, as I stated before, there is nothing formal, no 24 formal complaints, or any of that action. But 25 certainly our knowledge, just by reference to these</p>
<p style="text-align: center;">Page 179</p> 	<p style="text-align: center;">Page 181</p> <p>1 entity's names. 2 Q. Has the Attorney General's Office had any 3 contact with Aristotle, let's say, in the last two 4 years? 5 A. Not that I'm aware of. And, you know, that 6 wasn't part of any review or research I did in 7 preparation for today. 8 (Exhibit 17 marked.) 9 Q. I'm handing you what's been marked as 10 Exhibit 17. Have you seen this document or some 11 iteration of this document before? 12 A. Yes. 13 Q. And what is this? 14 A. This is a draft of House Bill 4, introduced 15 during this legislative session, 2023. 16 Q. Has the Attorney General's Office -- I 17 don't want privileged information here -- but has the 18 Attorney General's Office been involved in drafting 19 this proposed amendment? 20 A. Not that I'm aware of, no. 21 Q. Did the Attorney General's Office make any 22 suggestions regarding the proposed amendments to 23 Sections 1-4-5.5 and 1-4-5.6? 24 A. Not other than our normal process of 25 providing fiscal impact reports through the</p>

<p style="text-align: right;">Page 182</p> <p>1 legislative session, which we do -- at this count 2 it's about 560 different bills. So this is one of 3 560 that have come into our office in the past 51 4 days.</p> <p>5 Q. Does the Attorney General's Office have an 6 understanding of what House Bill 4 proposes to change 7 with regard to -- let's say specifically Sections 8 1-4-5.5 and 5.6?</p> <p>9 A. I'm sorry, can you ask that question again?</p> <p>10 Q. Sure. Does the Attorney General's Office 11 have an understanding of what this bill proposes with 12 regard to 5.5 and 5.6?</p> <p>13 A. So the office, generally -- the volume -- 14 and I have to put context into this, because it 15 affects the way I answer and explain -- answer your 16 question and explain bill analyses -- our office -- 17 right now, I'm overseeing the bill analysis for our 18 office, which includes requests from the Legislative 19 Finance Committee analysts -- which there is a number 20 of them, and they request fiscal impact reports -- 21 which aren't just fiscal impact -- it's also any 22 types of issues. And they ask them often of many 23 agencies for every bill, amendments, and 24 substitutions. Not all, but many. My estimate is 25 that we get about 75 percent of the bills introduced</p>	<p style="text-align: right;">Page 184</p> <p>1 I know that's a long answer. I hope that 2 helps put it in context.</p> <p>3 Q. Does the Attorney General's Office support 4 the proposed amendments to 5.5 and 5.6?</p> <p>5 MS. LECOCQ: If you want to declare -- I 6 don't know if you want me to show him where they are 7 in this bill? Because it's a huge bill.</p> <p>8 MR. MUELLER: I mean, we're on page 4 and 5 9 of this document.</p> <p>10 MS. LECOCQ: Okay.</p> <p>11 Q. Page 4 starts with 1-4-5.5.</p> <p>12 A. Excuse me, what page is it?</p> <p>13 Q. Page 4.</p> <p>14 A. Page 4. Would you like me to answer the 15 question?</p> <p>16 Q. Yes.</p> <p>17 A. So I'm not aware of our office taking a 18 formal position publicly in support of this. I can 19 say, generally, this helps address the issue, and 20 we'd be supportive of, because it helps clarify -- 21 just like dozens of other bills in the session, they 22 help to clarify terms that are not always clear; they 23 might be ambiguous and conflicting.</p> <p>24 Q. Does the Attorney General have any 25 understanding as to whether these proposed amendments</p>
<p style="text-align: right;">Page 183</p> <p>1 with a request for a fiscal impact report to our 2 office.</p> <p>3 And so, by the time we receive a request, 4 we have 24 hours, generally, to return the fiscal 5 impact. They're assigned to, I think, about 40 6 attorneys throughout the office, based off of some 7 subject matter, experience; sometimes, it's 8 completely random, too. And the attorney then has 18 9 hours to complete the analysis, submit it. And it 10 usually goes through one, sometimes two, reviews 11 before being released back to the Legislative Finance 12 Committee.</p> <p>13 So our office being aware of a bill, these 14 attorneys and someone who reviews it will generally 15 be aware of it. But the time constraints on our 16 office's ability, you know, to get into the weeds on 17 bills, there aren't many that I can say the office, 18 as an entity, is familiar with. Some attorneys that 19 do the fiscal impact reports are aware of it.</p> <p>20 But, can I say that the Attorney General, 21 or even the executive team, understands all the 22 details of every single bill? No, they don't. It's 23 not possible, literally possible, for that to happen, 24 given that we receive over 100 of these a week, on 25 top of everyone's normal workload.</p>	<p style="text-align: right;">Page 185</p> <p>1 were motivated, in whole or in part, by VRF's 2 lawsuit?</p> <p>3 A. I'm not aware of that. That might be a 4 better question for the Secretary of State, because 5 they're the subject matter expert in these statutes 6 that are being amended.</p> <p>7 Q. Okay. If we look at the proposed amendment 8 to 5.5 C -- which is the second to the last paragraph 9 on page 4 -- I'm just going to read through this and 10 annotate as I go. So C says, "Each requester of 11 voter data, mailing labels or special voter lists 12 shall sign an affidavit that the voter data, mailing 13 lists, or special voter lists shall sign an affidavit 14 that the voter data, mailing lists shall be used for 15 governmental or" -- and then this amendment proposes 16 to remove "election and." The original has "election 17 campaign purposes only." This amendment would add, 18 "shall not be transferred, copied, shared or conveyed 19 to any person outside the requesting party's agency 20 or organization, shall not be made accessible by the 21 general public on the internet or through other 22 means." And then the original has "and shall not be 23 made available for use for unlawful purposes."</p> <p>24 Did I fairly characterize that?</p> <p>25 A. Yes.</p>

<p style="text-align: center;">Page 186</p> <p>1 Q. If New Mexico law already prohibits posting 2 voter data on the internet, why is this amendment 3 necessary?</p> <p>4 MS. LECOCQ: Objection.</p> <p>5 A. Yeah, I can't speak to the intent of the 6 sponsors, the legislators. That would be a question 7 for a member of the legislature.</p> <p>8 But I will just say -- and I mentioned this 9 before -- that there are many statutes that need 10 housekeeping. And some of that -- you know, terms 11 that are insistent, terms that are duplicative, terms 12 that aren't defined. And I see this as addressing an 13 issue that -- you know, obviously we're arguing over 14 these terms, and this would clarify, to help avoid 15 that ambiguity, and better clarify the requirements 16 of the statute.</p> <p>17 Q. Okay. I want to then turn your 18 attention -- if you look at the bottom of page 5, it 19 begins the amendments to Section 1-4-5.6.</p> <p>20 And in the definition of "Unlawful use of 21 voter data, mailing labels, or special voter lists, 22 consists of -- this is Subsection A -- it says, "the 23 knowing and willful." The amendment purports to 24 strike the words "use of such information for 25 purposes prohibited by the Voter Records System Act,"</p>	<p style="text-align: center;">Page 188</p> <p>1 identifies, or that could be used to identify, a 2 specific voter or the voter's name, mailing or 3 residential address to be made publicly available on 4 the internet or through other means."</p> <p>5 Did I read that section correctly?</p> <p>6 A. Yes.</p> <p>7 Q. Does the Attorney General agree that 8 violations of these provisions both, as they are 9 currently written, and as would be amended, are 10 crimes under New Mexico law?</p> <p>11 MS. LECOCQ: Objection.</p> <p>12 A. I mean, our office hasn't taken a position 13 on these proposed -- that I'm -- the fiscal impact 14 reports they include a note that they're not formal 15 positions of our office. But, I mean, these are in 16 the same section as, you know, describing the fourth 17 degree felonies. So I think that can be presumed. 18 But our office hasn't taken any kind of formal 19 position on it.</p> <p>20 Q. You'll agree with me that lines 12 through 21 17 do say that the unlawful use of voter data is a 22 fourth degree felony; and upon conviction, the 23 violator shall be fined \$100 for each line of the 24 information that was unlawfully used?</p> <p>25 A. Yeah, I mean, that's where my conclusion</p>
<p style="text-align: center;">Page 187</p> <p>1 and to add: "Selling, loaning, providing access to 2 or otherwise surrendering of voter data, mailing 3 labels or special voter lists by a person for 4 purposes prohibited by the Election Code."</p> <p>5 Did I fairly characterize that section?</p> <p>6 A. Yes.</p> <p>7 Q. Does that language that this would add on 8 lines 2 to 4 of page 6 sound familiar to you?</p> <p>9 MS. LECOCQ: Objection.</p> <p>10 A. I mean, have I read that word for word? I 11 can't -- I don't know if I have or not. I mean, some 12 of those points I know we're addressing here.</p> <p>13 Q. I think you have a copy of 1-5-22 in front 14 of you, if you need to refresh your recollection on 15 this. But I'll ask: Is that the same language 16 that's currently in Section 1-5-22?</p> <p>17 A. I'll say yes.</p> <p>18 Q. I'm going to move -- sorry, if you want a 19 chance to --</p> <p>20 A. No, no, that's fine, go ahead.</p> <p>21 Q. I just want to move to line 6 on page 6. 22 There is a (2) in parentheses that says -- this is an 23 addition from the amendment, "causing voter data, 24 mailing labels or special voter lists or any part of 25 the voter data, mailing labels or special lists that</p>	<p style="text-align: center;">Page 189</p> <p>1 comes from.</p> <p>2 Q. So there is a criminal penalty there for 3 someone that violates that statute, both as written, 4 as it would be written if this amendment passes?</p> <p>5 A. Yes.</p> <p>6 Q. I just want to go back to 1-4-5.5 that we 7 just looked at, on page 4. Is a violation of 1-4-5.5 8 a crime?</p> <p>9 MS. LECOCQ: Objection.</p> <p>10 A. I know that this is being -- this is part 11 of the issue that's being raised on appeal, and I 12 believe that our office has taken a position that it 13 is or could be. And I think that can be resolved by 14 the court, if there was a determination by the court.</p> <p>15 MR. MUELLER: Okay. I would like to 16 propose a four-minute break. I'm going to talk with 17 Jackson real quick, see if we have anything to clean 18 up. And if not, we'll be done.</p> <p>19 MS. LECOCQ: Great. We'll just step out. 20 (A discussion was held off the record.)</p> <p>21 MR. MUELLER: Okay. We can go back on the 22 record. And if Erin agrees, I would like to ask a 23 question about the document that you gave me. And we 24 can do it --</p> <p>25 MS. LECOCQ: Under Attorneys' eyes.</p>

<p style="text-align: center;">Page 194</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF NEW MEXICO 3 VOTER REFERENCE FOUNDATION, LLC, 4 Plaintiff, 5 vs. NO: 22-CV-0222 JB/KK 6 RAUL TORREZ, in his official capacity as 7 New Mexico Attorney General, et al., 8 Defendants. 9 REPORTER'S CERTIFICATE 10 I, JENNIFER BEAN, New Mexico CCR #94, DO HEREBY 11 CERTIFY that on March 13, 2023, the Deposition 12 of JOSEPH DWORAK was taken before me at the 13 request of, and sealed original thereof retained 14 by: 15 Attorney for the Plaintiff 16 MR. MATT MUELLER 17 GRAVES GARRETT, LLC 18 1100 Main Street, Suite 2700 19 Kansas City, MO 64105 20 I FURTHER CERTIFY that copies of this Certificate 21 have been mailed or delivered to all Counsel, 22 and parties to the proceedings not represented 23 by counsel, appearing at the taking of the 24 Deposition. 25 I FURTHER CERTIFY that examination of this transcript 26 and signature of the witness was required by the 27 witness and all parties present. On _____ a 28 letter was mailed or delivered Ms. Erin Lecocq 29 regarding obtaining signature of the witness, 30 and corrections, if any, were appended to the 31 original and each copy of the Deposition.</p>	<p style="text-align: center;">Page 196</p> <p>1 VOTER REFERENCE v. RAUL TORREZ, et al. 2 WITNESS SIGNATURE/CORRECTION PAGE 3 If there are any typographical errors to your 4 deposition, indicate them below: 5 PAGE LINE 6 _____ Change to _____ 7 _____ Change to _____ 8 _____ Change to _____ 9 _____ Change to _____ 10 Any other changes to your deposition are to be listed 11 below with a statement as to the reason for such 12 change. 13 PAGE LINE CORRECTION REASON FOR CHANGE 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 I, JOSEPH DWORAK, do hereby certify that I have read 20 the foregoing pages of my testimony as 21 transcribed and that the same is a true and 22 correct transcript of the testimony given by me 23 in this deposition on March 13, 2023, except for 24 the changes made. 25 _____ 26 JOSEPH DWORAK 27 (8018N) JB</p>
<p>Page 195</p> <p>1 I FURTHER CERTIFY that the recoverable cost of the 2 original and one copy of the Deposition, 3 including exhibits, to MR. MATT MUELLER is 4 \$ _____. 5 I FURTHER CERTIFY that I did administer the oath to 6 the witness herein prior to the taking of this 7 Deposition; that I did hereafter report in 8 stenographic shorthand the questions and answers 9 set forth herein, and the foregoing is a true 10 and correct transcript of the proceeding had 11 upon the taking of this Deposition to the best 12 of my ability. 13 I FURTHER CERTIFY that I am neither employed by nor 14 related to nor contracted with (unless excepted 15 by the rules) any of the parties or attorneys in 16 this case, and that I have no interest 17 whatsoever in the final disposition of this case 18 in any court. 19 _____ 20 Jennifer Bean, FAPR, RMR, RDR, CRR 21 BEAN & ASSOCIATES, INC. 22 NM Certified Court Reporter #94 23 License Expires: 12/31/23 24 (8018N) JB 25 Date taken: March 13, 2023 26 Proofread by: LR</p>	